SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 7

HARTFORD-EMPIRE COMPANY, F. GOODWIN SMITH, BARTLETT ARKELL, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

No. 8

CORNING GLASS WORKS, EMPIRE MACHINE COMPANY, ALEXANDER D. FALCK, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

No. 9

OWENS-ILLINOIS GLASS COMPANY, WILLIAM E. LEVIS, E. F. MARTIN, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

No. 10

HAZEL-ATLAS GLASS COMPANY, J. HARRISON McNASH, WALTER H. McCLURE, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

No. 11

THATCHER MANUFACTURING COMPANY, H. C. MANDEVILLE, R. W. NIVER, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 29, 1943

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[fol. 1]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION

Civil Action No. 4426

THE UNITED STATES OF AMERICA, Plaintiff,

v.

HARTFORD-EMPIRE COMPANY, CORNING GLASS WORKS, EMPIRE MACHINE COMPANY, Owens-Illinois Glass Company, Hazel-Atlas Glass Company, Thatcher Manufacturing Company, Lynch Corporation, Ball Brothers Company, Glass Container Association of America, Inc., The Stevenson Corporation, Liberty Glass Company, Anchor Hocking Glass Corporation, F. Goodwin Smith, Bartlett Arkell, Alexander D. Falck, Robson D. Brown, John C. Hostetter, Roger M. Eldred, Karl E. Peiler, Arthur T. Safford, Jr., Theodore L. Champeau, William H. Honiss, A. M. Pease, Amory Houghton, Arthur A. Houghton Jr., Alanson B. Houghton, Isaac J. Collins, Eugene C. Sullivan, William H. Curtiss, George D. Macbeth, Glen W. Cole, P. W. Jenkins, J. L. Peden, W. C. Decker, John L. Thomas, George B. Hollister, Arthur L. Day, William E. Levis, A. W. Sherwood, F. J. Solon, E. F. Martin, F. T. Nesbit, John H. McNerney, R. H. Barnard, C. B. Belknap, Harold Boeschenstein, W. H. Boshart, H. R. Collin, George P. Greenhalgh, Ben F. Haselton, Jr., W. W. Knight, R. H. Levis, F. H. McAdoo, H. C. Phillipps, C. J. Root, F. W. Schwenck, C. J. Wilcox, J. Harrison [fol. 2] McNash, Walter H. McClure, George S. Quay, A. L. Metzner, L. C. Paull, H. W. Gee, William W. Holloway, B. H. Seabright, J. Sumner Jones, S. O. Laughlin, Jr., H. C. Mandeville, R. W. Niver, E. F. Wellinghoff, C. C. Decker, F. H. Mills, S. G. H. Turner, Jervis Langdon, W. H. Mandeville, C. K. Hevener, F. W. Swan, Stanton Griffis, Thomas Chandler Werbe, E. G. Bridges, A. G. Doll, J. L. Watts, Uz McMurtrie, N. M. McCullough, Frank C. Ball, George A. Ball, E. Arthur Ball, W. H. Ball, Edmund F. Ball, A. M. Bracken, Fred J. Petty, George F. Collins, Russell L. Davidson, C. J. Pfeffer, Frank P. Collins, J. D. Dilworth, W. V. Fisher,

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[File endorsement omitted.]

COMPLAINT—Filed December 11, 1939

The United States of America, seeking equitable relief, by its attorney, the United States Attorney for the Northern District of Ohio, acting under the direction of the Attorney General, complains and alleges, on information and belief, as follows:

Jurisdiction and Venue

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," said act being commonly known as the "Sherman Antitrust Act," and under Section 15 of the Act [fol. 3] of Congress, October 15, 1914, c. 323, 38 Stat. 730, as amended, said act being commonly known as the "Clayton Act," against the above-named defendants, in order to prevent violations by them, jointly and severally, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act.

2. The alleged unlawful acts and violations hereinafter described, including the unlawful conspiracies, unlawful monopolies, attempts to monopolize and combinations and agreements in restraint of trade and commerce among the several States of the United States, and with foreign nations, have been and are conceived, carried out, and made effective in part within the Western Division of the Northern District of Ohio, and many of the unlawful acts done in pursuance thereof have been performed by the defendants or some of them and their respective representatives within said Division of said District. Certain of the defendants conduct their business and are found within the said Division of said District. The interstate trade and commerce involved in the glass industry, as hereinafter

described, are carried on in part within such District and Division.

Description of Defendants

3. The defendant Hartford-Empire Company (sometimes hereinafter referred to as Hartford) is a corporation organized and existing under the laws of the State of Delaware, with its principal office at Hartford, Connecticut. Said defendant was organized in 1922 and succeeded to the assets of its predecessor, the Hartford-Fairmont [fol. 4] Company (sometimes hereinafter referred to as Hartford-Fairmont). Said defendant is a patent holding company engaged in the acquisition and development of inventions and patents relating to machinery for the manufacture of glassware and the leasing and licensing of such machinery. Said defendant does not commercially manufacture glass-making machinery nor glassware of any kind.

4. The defendant Corning Glass Works is a corporation organized in 1936 under the laws of the State of New York, with its principal office at Corning, New York. This defendant is the successor of a company of the same name, incorporated in 1911 under the laws of the State of New York, which was in turn successor to the business of a company originally incorporated in New York in 1875. (The defendant, Corning Glass Works, and its predecessors are sometimes hereinafter referred to as Corning.) Corning (with its subsidiaries) is one of the largest manufacturers and distributors of glass products in the United States and is engaged principally in the production and distribution of incandescent bulbs, signal and optical ware, heat-resisting ware, and other forms of specialty ware.

5. The defendant Empire Machine Company (sometimes hereinafter referred to as Empire Machine or Empire) is a corporation organized in 1909 and existing under the laws of the State of Maine, with its principal office at Portland, Maine. It is a patent holding company for the defendant Corning, and 90% of its stock is owned by stockholders of that company. Said defendant owns over 40% of the stock of the defendant Hartford.

[fol. 5] 6. The defendants Alanson Houghton, Amory Houghton, and Arthur A. Houghton, Jr., are directors of

Houghton Associates, Inc. (sometimes hereinafter referred to as Houghton Associates), a corporation organized and doing business under the laws of the State of New York, and Houghton Associates has for some time in the past owned, and now owns, 40% of the stock of defendant Corning. Such individual defendants and defendant Alexander D. Falck have been, and now are, officers and directors of the defendants Corning, Empire Machine, and Hartford.

7. The defendant Owens-Illinois Glass Company (sometimes hereinafter referred to as Owens) is a corporation organized and existing under the laws of the State of Ohio, with its principal office at Toledo, Ohio. The defendant Owens was incorporated in 1907 under the name of the Owens Bottle Machine Corporation, and changed its name to the Owens Bottle Company in 1919. On April 17, 1929, it again changed its name to the Owens-Illinois Glass Company in connection with its acquisition of part of the assets of the Illinois Glass Company. Said defendant Owens (with its subsidiaries) is the largest glass container manufacturer and distributor in the United States. It is also the second largest manufacturer and distributor of glass milk bottles in the United States.

8. The defendant Hazel-Atlas Glass Company (sometimes hereinafter referred to as Hazel-Atlas) is a corporation organized and existing under the laws of the State of West Virginia, with its principal office at Wheeling, West Virginia. This defendant was originally in- [fol. 6] corporated in 1901 under the name of Atlas Glass and Metal Company; it was subsequently merged with the Hazel Glass Company, a Pennsylvania corporation, and the name of the original company was changed to Hazel-Atlas Glass Company. The defendant Hazel-Atlas (with its subsidiaries) is the second largest glass container manufacturer and distributor in the United States.

9. The defendant Thatcher Manufacturing Company (sometimes hereinafter referred to as Thatcher) is a corporation organized in 1905 and existing under the laws of the State of New York, with its principal office at Elmira, New York. It (with its subsidiaries) is the largest manufacturer and distributor of glass milk bottles in the United States.

10. The defendant Lynch Corporation (sometimes hereinafter referred to as Lynch) is a corporation organized and existing under the laws of the State of Indiana, with its principal office at Anderson, Indiana. This defendant was originally incorporated in 1928 under the name of Lynch Glass Machine Company, taking over the business of certain companies that had been manufacturers of glass machinery since 1917. The company was reincorporated under the laws of the State of Indiana in 1930. It is the largest maker of forming machines for the manufacture of glassware in the United States.

11. The defendant Anchor Hocking Glass Corporation (sometimes hereinafter referred to as Anchor Hocking) is a corporation organized and existing under the laws of the State of Delaware with its principal office at Lancaster, Ohio. This company was originally incorporated under [fol. 7] the name of Anchor Cap Corporation in 1928 and changed its name in 1938 to Anchor Hocking Glass Corporation after it acquired the assets of a number of other companies, including the Hocking Glass Company, originally organized in 1905. It (with its subsidiaries) is the third largest manufacturer and distributor of glass containers in the United States.

12. Illinois Glass Company, a corporation organized under the laws of the State of Illinois in 1873, sold a substantial part of its assets to the defendant Owens in 1929. Between prior to 1929 and some time in 1938, Illinois Glass Company owned substantial blocks of stock in the defendants Owens, Hazel-Atlas, Lynch, Thatcher, and Anchor Hocking, and in 1938, the stock owned by Illinois Glass Company in these various companies, and other companies, was distributed pro rata to the stockholders of Illinois Glass Company, including the individual defendants, William E. Levis, R. H. Levis, and Harold Boeschenstein (who, as hereinafter alleged, were and are officers or directors of the defendant Owens) and the defendants, Isaac J. Collins and J. Harrison McNash and other individuals, who are either closely related to, or financially connected with, the defendants, William E. Levis and R. H. Levis. Such individual defendants and other individuals are known in the industry as the Levis Group. The Levis Group was represented by the defendant William E. Levis during the

period from 1932 to 1934 on the board of directors of the defendant Hazel-Atlas, and upon the resignation of the defendant, William E. Levis, he designated the defendant, George S. Quay, as his representative on the board of di- [fol. 8] rectors of the defendant, Hazel-Atlas. The Levis Group has been actively interested in the management of the defendants Hartford, Owens, Hazel-Atlas, Lynch, Thatcher, and Anchor Hocking, and said Group has been directly or indirectly represented on the board of directors of the defendants Hartford, Owens, Hazel-Atlas, Anchor Hocking, and Thatcher, and said Group now is directly or indirectly represented on the board of directors of the defendants, Owens, Hazel-Atlas, Anchor Hocking, and Thatcher.

13. The defendant, Liberty Glass Company (sometimes hereinafter referred to as Liberty), is a corporation organized in 1919 and existing under the laws of the State of Oklahoma, with its principal office at Sapulpa, Oklahoma. It is the fourth largest manufacturer and distributor of glass milk bottles in the United States.

14. The defendant, Ball Brothers Company (sometimes hereinafter referred to as Ball Brothers), is a corporation organized and existing under the laws of the State of Indiana, with its principal office at Muncie, Indiana. Said defendant, through predecessors, has been in business since 1882, and it (with its subsidiaries) is the largest manufacturer and distributor of fruit jars in the United States.

15. The defendant, Glass Container Association of America, Inc. (sometimes hereinafter referred to as Glass Container Association, or the Association), is a corporation organized in 1919, and existing under the laws of the State of Delaware with its principal office at New York, [fol. 9] New York. The Association includes among its members all but two of the glass container manufacturers in the United States. The defendants, Owens, Hazel-Atlas, Thatcher, Liberty, Anchor Hocking, and Ball Brothers, have been for some time and now are each members of the Association.

16. Defendant Stevenson Corporation (organized in 1920 and existing under the laws of the State of New York), the defendant Charles R. Stevenson (president, director, and

principal stockholder of the Stevenson Corporation), and the defendant Emory G. Ackerman have supervised and conducted and now supervise and conduct the affairs of the Association.

17. The individual defendants F. Goodwin Smith, Bartlett Arkell, Alexander D. Falck, Robson D. Brown, John C. Hostetter, Roger M. Eldred, Karl E. Peiler, Arthur T. Safford, Jr., Theodore L. Champeau, William H. Honiss, A. M. Pease, Amory Houghton, Arthur A. Houghton, Jr., and Alanson B. Houghton have been and are officers or directors, and have participated and participate in the direction and management, of defendant Hartford. Such individual defendants have approved, authorized, ordered, and done some or all of the acts herein alleged to have been performed by defendant Hartford.

18. The individual defendants Alexander D. Falck, Eugene C. Sullivan, Amory Houghton, Arthur A. Houghton, Jr., William H. Curtiss, George D. Macbeth, Glen W. Cole, P. W. Jenkins, J. L. Peden, W. C. Decker, Alanson B. Houghton, John L. Thomas, George B. Hollister, and Arthur L. Day have been and are officers or directors, and have participated and participate in the direction and man-
[fol. 10] agement, of defendant Corning. Such individual defendants have approved, authorized, ordered, and done some or all of the acts herein alleged to have been performed by defendant Corning.

19. The individual defendants Alexander D. Falck, Alanson B. Houghton, Amory Houghton, Arthur L. Day, and Arthur A. Houghton, Jr., have been and are officers or directors, and have participated and participate in the direction and management, of defendant Empire Machine. Such individual defendants have approved, authorized, ordered, and done some or all of the acts herein alleged to have been performed by defendant Empire Machine.

20. The individual defendants William E. Levis, A. W. Sherwood, F. J. Solon, E. F. Martin, F. T. Nesbitt, John H. McNerney, R. H. Barnard, C. B. Belknap, Harold Boeschenstein, W. H. Boshart, H. E. Collin, George P. Greenhalgh, Ben F. Hazelton, Jr., W. W. Knight, R. H. Levis, F. H. McAdoo, H. G. Phillipps, C. J. Root, F. W. Schwenck, and C. J. Wilcox have been and are officers or directors and have

participated and participate in the direction and management, of defendant Owens. Such individual defendants have approved, authorized, ordered, and done some or all of the acts herein alleged to have been performed by defendant Owens.

21. The individual defendants J. Harrison McNash, Walter H. McClure, George S. Quay, A. L. Metzner, L. C. Paull, H. W. Gee, William W. Holloway, B. H. Seabright, J. Sumner Jones, and S. O. Laughlin, Jr., have been and are officers or directors, and have participated and partici- [fol. 11] pate in the direction and management, of defendant Hazel-Atlas. Such individual defendants have approved, authorized, ordered, and done some or all of the acts herein alleged to have been performed by defendant Hazel-Atlas.

22. The individual defendants H. C. Mandeville, R. W. Niver, E. F. Wellinghoff, C. G. Decker, F. H. Mills, S. G. H. Turner, Jervis Langdon, W. H. Mandeville, C. K. Hevener, F. W. Swan, and Stanton Griffis have been and are officers or directors, and have participated and participate in the direction and management, of defendant Thatcher. Such individual defendants have approved, authorized, ordered, and done some or all of the acts herein alleged to have been performed by defendant Thatcher.

23. The individual defendants Thomas Chandler Werbe, E. G. Bridges, A. G. Doll, J. L. Watts, Uz McMurtrie, and N. M. McCullough have been and are officers or directors, and have participated and participate in the direction and management of defendant Lynch. Such individual defendants have approved, authorized, ordered, and done some or all of the acts herein alleged to have been performed by defendant Lynch.

24. The individual defendants George F. Collins, Russell L. Davidson, C. J. Pfeffer, and Frank P. Collins have been and are officers or directors, and have participated and participate in the direction and management, of defendant Liberty Glass. Such individual defendants have approved, authorized, ordered, and done some or all of the acts herein alleged to have been performed by defendant Liberty Glass.

25. The individual defendants Isaac J. Collins, J. D. Dilworth, W. V. Fisher, T. C. Fulton, Herman Krannert, V. E.

[fol. 12] Macy, Jr., J. K. Moffett, Ernest Stauffen, Jr., L. B. Williams, G. F. Rieman, J. O. Deegan, B. E. Factor, C. D. King, H. J. Carr, H. C. Laughlin, H. J. Hamlin, and F. B. Schlub have been and are officers or directors, and have participated and participate in the direction and management, of defendant Anchor Hocking. Such individual defendants have approved, authorized, ordered, and done some or all of the acts herein alleged to have been performed by defendant Anchor Hocking.

26. The individual defendants Frank Clayton Ball, George A. Ball, E. Arthur Ball, W. H. Ball, Edmund F. Ball, A. M. Bracken, and Fred J. Petty have been and are officers or directors, and have participated and participate in the direction and management, of defendant Ball Brothers. Such individual defendants have approved, authorized, ordered, and done some or all of the acts herein alleged to have been performed by defendant Ball Brothers.

27. The corporate defendants, and each of them, are engaged in trade and commerce between and among the several States of the United States.

28. The glass machinery and the various kinds of glassware referred to herein are manufactured in various localities and are shipped and distributed through the channels of interstate trade and commerce.

Description and Early History of Glassware Industry

29. For the purpose of this complaint, the glassware industry may be divided into two divisions—glass container and pressed and blown glassware. The glass-container divi- [fol. 13] sion produces packers ware (the industry term for glass food containers used by packers of food products), pharmaceutical, prescription and toilet ware, liquor and beer bottles, fruit jars, jelly glasses, milk bottles, and the like. The pressed and blown glassware division produces electric-light bulbs, tableware, heat-resisting ware (principally glass cooking utensils), lamp chimneys, signal and optical ware, scientific or laboratory glassware, automobile glassware (not including windshields and windows), and similar items. These two divisions are independent for commercial purposes.

30. Prior to 1905 glassware was made principally by hand or by semiautomatic machinery in the United States. In 1905 the industry was revolutionized by the invention of an automatic suction machine. This machine was made by Michael F. Owens, who was associated with the predecessor of the defendant Owens. Subsequent thereto the methods of glassware production improved to such an extent that no manufacturer could commercially engage in the business of producing glassware unless automatic machinery was used.

From time to time between 1905 and 1917, defendant Owens (the largest manufacturer and distributor of glass containers in the United States) owned various patents and inventions for the manufacture of glassware machinery known as the suction method, and it manufactured and leased such machinery to other manufacturers of glassware under license agreements which limited, as to weight or size, the type of glass containers that could be manufactured by such licensees. Under such agreements, royalties were [fol. 14] paid by the licensees to Owens and the licensees agreed that all improvements made on the machines by the licensees were to be transferred to Owens.

31. Prior to 1906, the predecessor of defendant Corning was engaged in the manufacture of electric-light bulbs and specialty glassware such as signal and optical ware, heat-resisting ware, laboratory ware and the like, and it had certain patents for the manufacture of machinery to make such ware. In 1909, the predecessor of Corning organized defendant Empire Machine for the purpose of carrying on development work in automatic glass-bulb making machinery.

32. Prior to 1916, Hartford-Fairmont, the predecessor of defendant Hartford, was organized for the purpose of acquiring patents for the manufacture of glass-making machinery, and it developed an invention for an automatic gob-feeding machine to produce glass containers and blown glassware in competition with the then existing Owens suction machines.

33. Since 1916 the commercial methods for manufacturing glass containers and other blown glassware have been as follows:

(a) Sand, soda-ash, limestone, and cullet (broken glass) are mixed and then fed into the hottest portion of a furnace or tank. The melted mixture or batch then flows slowly into cooler sections of the furnace from which it is fed to the glass-container making machines. There have been little or no instances of litigation with respect to tanks or furnaces used by different companies engaged in the manufacture of glassware.

[fol. 15] (b) The glass container making machines, into which the batch flows, are of two types. One uses the suction process, and the other the gob-feeding process. Since 1905 the defendant Owens has claimed control of the suction process. Since 1916 the defendant Hartford has claimed control of the gob-feeding method, and by forming and carrying out the combination and conspiracy and by restraining trade and commerce in the manner hereinafter alleged, defendants Hartford and Owens at the present time control and dominate all competing patents and processes relating to gob feeding in the manufacture of glassware. Since 1916 the suction and gob-feeding methods have been virtually the only commercially practical methods of making glass containers and other blown glassware. In the gob-feeding process the molten glass is fed through an orifice by a mechanism which causes the glass to be extruded in gobs or separate drops, with shapes roughly approximating those of the molds into which they drop when cut off by a pair of shears beneath the orifice. In the suction process the molten glass is sucked into iron molds, which revolve around a central pillar and each of which in turn dips into the pot of molten glass and sucks up its charge. As each mold rises, a knife cuts the glass in the mold from that in the pot.

(c) In the suction process the molten glass is sucked directly into the molds. In the gob-feeding process the molds into which the molten glass is poured are parts of a separate machine known as a former. Until recently there were several types of forming machinery manufactured and sold by independent companies. By forming and carrying out the combination and conspiracy and by re-[fol. 16] straining trade and commerce in the manner hereinafter alleged, defendants Hartford and Lynch at the present time control and dominate the manufacture of forming machines.

(d) After the glassware leaves the forming machine it is carried by a conveyor into a lehr or oven, where it is stacked on a belt which moves slowly through an annealing chamber. This process of annealing tends to prevent the finished product from cracking or breaking when subjected to rapid changes in temperature. By forming and carrying out the combination and conspiracy and by restraining trade and commerce in the manner hereinafter alleged, defendant Hartford at the present time controls and dominates the manufacture of lehr equipment.

Offenses Charged

34. The defendants have violated, and are now violating, Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act by unlawfully conspiring, monopolizing, attempting to monopolize, and by unlawfully contracting, combining, and conspiring to restrain interstate and foreign trade and commerce, and more particularly by acquiring and maintaining monopolies of (a) patents covering the manufacture and licensing of glass-making machinery, (b) the manufacture and distribution of glass-making machinery, and (c) the manufacture, distribution, and sale of glass products, and by excluding others from the fair opportunity to engage freely and unrestrictedly in the interstate and foreign trade and commerce in said machinery and glass products. Said conspiracies, monopolies, attempts to monopo- [fol. 17] lize, and said contracts, combinations, and conspiracies to restrain interstate trade and commerce in glass-making machinery and glass products manufactured thereby, will hereinafter be set forth.

Formation and continuation of the conspiracy

35. Prior to or on or about October 6, 1922, defendants Corning, Empire Machine, and Hartford (through its predecessor Hartford-Fairmont) and the individual defendants Alexander D. Falck, Alanson D. Houghton, Bartlett Arkell, W. H. Honiss, Karl E. Peiler, and others entered into a conspiracy unlawfully to attempt to monopolize, unlawfully to monopolize, and unlawfully to combine to restrain trade among and between the several States of the United States with respect to patents and inventions on automatic machinery for the production of glass containers and pressed and blown glassware, and also unlawfully to

attempt to monopolize, unlawfully to monopolize, and unlawfully to combine to restrain trade among and between the several States of the United States in the manufacture and distribution of automatic machinery for the production of glass containers and pressed and blown glassware. It was also contemplated, as part of said conspiracy, that there would be an unlawful attempt to monopolize, an unlawful monopoly, and an unlawful combination in restraint of trade among and between the several States of the United States in the manufacture and distribution of pressed and blown glassware, and an unlawful attempt to monopolize, an unlawful monopoly, and an unlawful combination in restraint of trade in the manufacture and distribution of glass containers among and between the several States [fol. 18] of the United States, such unlawful attempted monopolies, monopolies, and combinations in restraint of trade to be effectuated through the control of the patents on machinery for the production of pressed and blown glassware and glass containers and through the control of machinery for the production of pressed and blown glassware and glass containers.

36. After October 6, 1922, the other corporate and individual defendants from time to time joined the conspiracy referred to in paragraph 35 hereof, and became participants therein, or joined other unlawful conspiracies, monopolies, or restraints of trade incidental to or part of such principal conspiracy, monopoly, and combination in restraint of trade as more fully hereinafter alleged.

37. Defendants herein have conspired, and are now conspiring, unlawfully to attempt to monopolize and to monopolize, and have unlawfully combined and now are combining to restrain trade, and such defendants have maintained and are now maintaining an unlawful monopoly or unlawful monopolies, and such defendants have, and now are, unlawfully restraining trade among and between the several States of the United States with respect to—

(a) Patents on automatic machinery for the production of pressed and blown glassware and glass containers;

(b) Machinery for the production of pressed and blown glassware and glass containers, and the distribution of such machinery;

[fol. 19] (c) The manufacture and distribution of pressed and blown glassware and particularly heat-resisting glassware;

(d) The manufacture and distribution of all kinds of glass containers;

(e) The manufacture and distribution of milk bottles;

(f) The manufacture and distribution of fruit jars.

38. The unlawful conspiracies, monopolies, and combinations in restraint of trade referred to in paragraphs 35, 36, and 37 hereof, and the entry and participation by the various defendants in such conspiracies, monopolies, and combinations have been and are the result of a series of wrongful acts extending over a period of years in the manner and to the extent hereinafter more fully set forth, and such conspiracies, monopolies, and combinations were and are being furthered, accomplished, and carried out by such acts and methods.

Hartford-Corning Agreements of 1916 and 1922

39. Prior to 1916, the predecessor of defendant Corning (through its patent-holding company defendant Empire) and Hartford-Fairmont had each disputed the validity of the patents and inventions for glass-making machinery which the other owned or was developing. Litigation and patent interference proceedings were imminent.

40. As a result of negotiations between Hartford-Fairmont and defendants Corning and Empire, extending over a period of years prior to June 30, 1916, defendant Corning and Hartford-Fairmont recognized that the conflicts and disputes between them as to their respective patents and [fol. 20] inventions might result in an open, competitive, and uncontrolled industry with respect to the manufacturing and licensing of glassware machinery and also with respect to the manufacture, production, and distribution of glass containers and pressed and blown glassware.

41. Under date of June 30, 1916, Hartford-Fairmont and defendant Empire Machine (patent holding company for defendant Corning) entered into an agreement by which Hartford-Fairmont granted Empire Machine an exclusive license to use patented glass-making apparatus and proc-

esses of Hartford-Fairmont for the production of pressed and blown glassware and Empire Machine granted Hartford-Fairmont an exclusive license to use patented glass-making apparatus and processes of Empire Machine for the production of glass containers.

42. Under date of October 6, 1922, Hartford-Fairmont and defendant Empire Machine, and the individual defendants Alanson B. Houghton, Alexander D. Falck, Bartlett Arkell, William H. Honiss, J. Dale Dilworth, F. Goodwin Smith, and Arthur L. Day, and others, entered into an agreement known as the "Agreement For Formation of Hartford-Empire Company." Under this agreement defendant Hartford was organized and had transferred to it all of the assets of Hartford-Fairmont and most of the assets of Empire Machine, including all of Empire Machine's patents and inventions in connection with the manufacture of machinery for the production of glass containers and pressed and blown glassware. Hartford issued to Empire Machine 40.5% of its stock, the balance of the stock of [fol. 21] Hartford being issued to the former stockholders of Hartford-Fairmont.

43. On the same day, October 6, 1922, defendants Hartford, Corning, and Empire Machine, with Hartford-Fairmont, entered into an "Agreement Relating to Patent Rights and Formulaes." It was an express condition of the Formation Agreement referred to in Paragraph 42 hereof, that the Agreement Relating to Patent Rights and Formulaes be entered into between defendants Hartford, Corning, and Empire Machine Co., and Hartford-Fairmont.

44. Under the agreement referred to in paragraph 43 hereof, Hartford granted Corning an exclusive license to manufacture pressed and blown glassware under any and all patents then owned, or to be acquired in the future, by Hartford. The pressed and blown glassware field that was specified in the June 30, 1916 agreement referred to in paragraph 41 hereof was extended and more fully defined. Corning and Empire Machine granted Hartford an exclusive license to use all patents of Corning and Empire Machine for the manufacture of glass containers, subject to a "shop-right" of Corning to use such patents, but this "shop-right" has never been exercised by Corning in the commercial production of glass containers.

45. Subsequent to 1916, and up to the present time, Hartford (or its predecessor Hartford-Fairmont) has issued licenses to a number of glassware manufacturers for the production of different types of glassware, as hereinafter more specifically alleged. No other licensee of Hartford than Corning is licensed to use machinery covered by Hart-
[fol. 22] ford patents for the manufacture of glass bulbs and heat-resisting ware and other types of pressed and blown glassware.

46. Subsequent to 1922, and between 1929 and 1931, defendant Corning wished to extend its business to the manufacture of glass containers, and so advised defendant Hartford. Hartford refused to permit Corning to go into the glass container field in order to prevent further competition in such field, and Corning has at all times refrained and now refrains from going into such field.

47. Prior to 1922 certain glass-composition formulae for heat-resisting ware were covered by patents owned by defendant Corning and such patents expired in 1936.

48. Except for a limited license in 1920 to Fry Glass Company and a limited license to McKee Glass Company in 1921, it has been the policy of defendant Corning to refuse to license others in the United States under its patents for heat-resisting ware referred to in paragraph 47 hereof. This policy has continued and now continues beyond the expiration of the patents in 1936, and was and is aided by the agreement of 1922 between Hartford and Corning pursuant to which Corning had received an exclusive license in the field of heat-resisting ware, and by Hartford's policy to refuse to permit any of its licensees to manufacture pressed and blown glassware, including heat-resisting ware, on Hartford machines.

49. In 1931 defendant Hartford, at the request of defendant Corning, refused, because of the 1922 agreement, to issue licenses to McKee Glass Company and to MacBeth Evans Company so as to permit each of them to manufac-
[fol. 23] ture heat-resisting ware on machinery covered by the patents of defendant Hartford.

50. In 1937 Hartford refused to license Indiana Glass Company to manufacture heat-resisting ware on machinery covered by patents of defendant Hartford notwithstanding

the expiration of Corning's composition patents. Hartford stated that such refusal was based on its contractual relations with defendant Corning.

51. In 1937 defendant Anchor Hocking made preparations and intended to engage in the manufacture of heat-resisting ware. It then agreed, at the request of defendants Corning, Hartford, and Owens, not to engage in such business without first obtaining the consent of defendant Corning; and at no time since then has it engaged in such business.

52. By reason of the foregoing, the defendant Corning has a virtual monopoly of and dominates the manufacture of heat-resisting ware in the United States.

Hartford-Owens relations—Early controversies between Hartford and Owens regarding patents

53. In 1915 more than half of all the glass containers produced in the United States were made on suction machines, covered by patents of Owens. Prior to 1917 Owens had issued exclusive licenses on suction machines to various manufacturers. Such licenses were restrictive as to the type of ware which the manufacturer could make. For example, defendant Thatcher Manufacturing Company received a license only for milk bottles; defendant Hazel-Atlas received a license only for food and condiment jars; Greenfield Fruit Jar and Bottle Works received a license only to [fol. 24] manufacture fruit jars; Northwestern Ohio Bottle Company, Illinois Glass Company, and Charles Boldt Company each had licenses only for certain types of liquor bottles.

54. In 1915 Hartford-Fairmont put on the market a glass container feeder machine, and thereafter licensed various glass-container manufacturers at royalty percentage payments less than those charged by Owens. The initial license fee on the machinery covered by Hartford-Fairmont patents was also less than on the Owens machines, and the Hartford machines were less expensive to operate. Consequently, various licensees of Owens acquired feeder machine licenses from Hartford-Fairmont. This resulted in Owens' experiencing greater competition in the manufacture of glass containers.

55. Owens early attempted to control the feeder-machinery field. In 1918 Owens began to acquire patents on gob-feeding machinery. That year, it purchased Graham Glass Company which owned certain feeder patent rights. In 1918 Owens acquired the rights to the Lott gob-feeding inventions on which applications for patents were then pending. In 1921 Owens obtained an exclusive license from defendant Hazel-Atlas under the latter's Brookfield patents on feeding devices, and in 1923 Owens purchased these patents. It also owned the Bock patents on gob-feeding machinery and one of its inventors, Soubier, filed several applications for patents covering similar feeding devices.

56. Hartford-Fairmont at the same time continued its efforts to attain a dominant position in the feeder machin- [fol. 25] ery field. In 1919 defendant Peiler, an employee of Hartford-Fairmont, filed additional applications for gob-feeding patents. In 1921 Hartford-Fairmont purchased the Howard feeder patents from the Howard Automatic Glass Machinery Company. Nevertheless, in order to compel the Howard licensees to submit to the royalty rates and restrictions of a Hartford license agreement, defendant Hartford (as successor to Hartford-Fairmont) in 1923 sued Berney-Bond Company, a Howard licensee, alleging infringement of Hartford gob-feeding patents. The suit was settled when Berney-Bond took a license from Hartford. Thereafter, six other Howard licensees, namely, Pacific Coast Glass Company, Pierce Glass Company, Glenshaw Glass Company, Turner Brothers, Hygeia Glass Company, and Acme Glass Company were also induced to accept licenses from Hartford.

57. In 1918 Owens made an effort to eliminate Hartford-Fairmont from competition by offering to purchase Hartford-Fairmont's assets for $2,000,000. This offer was refused.

58. In 1923 Owens sued J. T. A. Hamilton Company, a Hartford licensee, alleging that Hartford's patents infringed the Lott and Brookfield patents owned by Owens.

59. In 1923 Hartford sued United States Glass Company, a user of the so-called Miller gob-feeding machine, claiming that the Miller patent infringed the Hitchcock patent on gob feeding which was owned by Hartford. The Hitchcock patent issued in 1906 and would expire in 1923. This suit was lost by Hartford in 1923.

[fol. 26] Owens-Hartford 1924 agreement

60. As a result of negotiations between Owens and Hartford extending over a period of several years prior to April 9, 1924, Owens and Hartford recognized that the conflicts and disputes between them as to gob-feeding patents and inventions, and the competition between them in the manufacture and licensing of machinery under such patents, if continued, would result in an open, competitive, and uncontrolled industry with respect to the manufacturing and licensing of glass-container machinery, and also with respect to the manufacture, production, and sale of glass containers.

61. In April 1924 Hartford, in carrying out the conspiracy, monopoly, and combination in restraint of trade hereinbefore alleged, induced Owens (Hartford's principal competitor in the manufacture and distribution of glassware machinery, and the largest manufacturer of glass containers in the United States), to join the combination and conspiracy for the purpose of securing, maintaining, strengthening, and extending the said conspiracy, monopoly, and combination in restraint of trade. Hartford and Owens sought complete control and domination of all patents relating to glass-making machinery and the issuance of licenses thereunder in order to drive out of business other glass-making machinery manufacturers (designated by Hartford and Owens as "outsiders") and to require all manufacturers of glass containers to obtain licenses under the patents of Hartford and Owens.

62. On or about April 9, 1924, Hartford and Owens, and others, entered into an agreement entitled "General License [fol. 27] Agreement." Under this agreement Hartford granted Owens a nonassignable and nondivisible license to make and use feeding and forming machines for the manufacture of glass containers under Hartford patents, and Owens granted Hartford a divisible, assignable, and exclusive license (except as to Owens) to make, use, and sell feeding and forming machines under Owens patents other than the patents on the Owens' suction machines. By this agreement Owens was thereafter precluded from selling or licensing any of its gob-feeding and its forming machinery. The respective licenses were for the duration of the patents and covered all inventions then owned and also all inven-

tions acquired or controlled by either party prior to July 1, 1941. By licensing Owens only with respect to containers, the license agreement from Hartford to Owens implicitly excluded Owens from using Hartford's patents in the pressed and blown glassware field, which Hartford had previously reserved to defendant Corning.

63. Under this agreement Owens agreed to pay royalties to Hartford (at a rate no higher than the lowest rate charged to the other licensees, and with a limited exemption with respect to 40 feeding and 40 forming machines) on all inventions licensed under the agreement and used by Owens, including Owens' feeder inventions licensed to Hartford. Hartford agreed to pay Owens one-half of Hartford's "divisible income" from feeding and forming machine inventions, such "divisible income" being Hartford's yearly income, less $600,000, from royalties, fees, and receipts as defined under the agreement.

[fol. 28] 64. The purpose and effect of the provision in the 1924 agreement with regard to the payments to be made by Hartford to Owens of one-half of the "divisible income" in excess of $600,000, as defined in the agreement, was to entitle Owens to share in the royalties and license fees paid by its competitors as licensees of Hartford, thus placing such competitors at a disadvantage in competition with Owens.

65. The existence of this 1924 agreement by which Owens shared in the royalties and license fees paid by the competitors of Owens was unknown to Owens' competitors at the time, and continued to be unknown to Owens' competitors (other than defendant Hazel-Atlas, who acquired such information in August 1932, as hereinafter alleged) until December 1938 when such information became public at the time of the hearings before the Temporary National Economic Committee pursuant to Public Resolution No. 113 (75th Congress).

66. Until September 30, 1935, when Owens sold to Hartford-Empire its right to receive income under the 1924 agreement (as amended in 1932, as hereinafter alleged), the amounts paid by Hartford to Owens under the 1924 agreement substantially exceeded the royalties paid by Owens to Hartford under the same agreement.

67. Under the 1924 agreement, Hartford and Owens agreed to prosecute vigorously infringement of their respective patents and they agreed to share equally any expense of bringing suit on any of their respective patents.

68. Under the 1924 agreement, Hartford and Owens agreed that they would contribute equally to the purchase [fol. 29] price of patents on feeding and forming machines acquired by either of them.

69. By section 22 of the 1924 agreement, Hartford agreed not to grant licenses for the manufacture of glass containers under feeding- and forming-machine patents licensed to Hartford by Owens without the consent of Owens except (a) to existing Hartford licensees for the fields of ware covered by existing licenses or (b) to a "Legitimate Glass Manufacturer" of sound commercial standing and not a user of his own products, for the kind of glassware made by such manufacturer during the 12-month period preceding the Owens-Hartford agreement and only for use at the present locality of such manufacturer's plants. Thereafter, Hartford did not grant licenses either under its own patents or under those assigned to it by Owens without first obtaining the consent of Owens.

70. The results of this 1924 agreement were twofold: (a) The elimination of Hartford's principal competitor in the licensing of glass machinery, and (b) the placing of Owens in a position to dominate the glass container industry, first, by sharing in the payments made by its competitors to Hartford under their license agreements, and second, through its veto on the power of Hartford to license its competitors.

Patent litigation and acquisitions resulting in elimination of competition—1924 to 1932

71. Subsequent to the making of the 1924 contract Owens and Hartford, in order to acquire control and domination of all patents relating to glass-container feeding and forming machinery and in order to acquire control and domina- [fol. 30] tion of the glass-container industry, continued to combine and to conspire for the purpose of restraining interstate trade and commerce in glass-making machinery, and in the production and sale of glassware.

72. At the time of the making of the 1924 agreement, there were a number of persons and companies independent of Hartford and Owens, engaged in the business of manufacturing and distributing glass-making machinery. There were also numerous manufacturers of glass containers, independent of Hartford and Owens, who used independent glass-making machinery. Subsequent to 1924, defendants Hartford and Owens inaugurated a campaign to drive out of business these independent manufacturers of glass-making machinery, and to compel or induce the users of such independent machinery to accept licenses from Hartford on the payment of royalties. This campaign was carried out by suits against the owners of rival patents and suits against licensees and users of machinery based on rival patents, by threats of suits against others, by the acquisition of conflicting patents and competing businesses and by other means more particularly hereinafter described.

73. In connection with the 1924 agreement Hartford failed to take an appeal from the decision in the suit which it had brought against United States Glass Company (referred to in paragraph 59 hereof and holding that the Hitchcock patent was invalid), and thus abandoned its rights under that patent. A decision sustaining the validity of the Hitchcock patent would have established that the inventions claimed under the Lott patent owned by Owens [fol. 31] and under which Hartford was licensed by the 1924 agreement, had been anticipated by the Hitchcock patent. In that event the claims made by Owens and Hartford under the Lott patent would have been invalid. Inasmuch as the Hitchcock patent had been issued prior to the issuance of the Lott patent, and in fact had expired in 1923, the effect of this action on the part of Hartford was to strengthen the patent position of Owens and Hartford.

74. After the 1924 agreement between Hartford and Owens, Hartford and its licensee, J. T. A. Hamilton Company, submitted to a consent decree in the Owens suit instituted in 1923 against Hamilton (and referred to in paragraph 58 hereof). Hartford in such consent decree recognized as valid the Brookfield and Lott patents owned by Owens.

75. In 1925 Hartford and Owens purchased the Sears and Lobb patent applications for forming machines, paying $40,000 for such patent applications.

76. In 1925 Hartford, with Owens sharing one-half the cost, took an option from the Whitall Tatum Company on the Headley and Thompson patent applications for forming machinery. In 1929 this option was extended by a new agreement between the parties.

77. In 1924 Owens, pursuant to its agreement with Hartford-Empire, sued Miller Glass Engineering Company claiming that its feeder machines infringed the Lott patent. In 1925 the Miller Company sold its patents to Hartford for $145,000, Owens and Hartford jointly sharing the expenses of the litigation and the acquisition of the patents. The suit was then discontinued.

[fol. 32] 78. In 1926 Hartford, in order to compel the users of Miller glass machinery to submit to the royalty rates and restrictions of a Hartford license agreement, sued Lamb Glass Company, a user of a Miller machine, claiming that the Miller machine infringed Hartford patents. After winning this suit, Hartford in 1932 instituted a second suit against Lamb Glass Company under a patent which was issued in 1928. These suits were finally settled by Lamb taking a Hartford license in 1932. In 1930 another Miller user, Atlantic Bottle Company, after being threatened with a suit by Hartford, was acquired by Owens and accepted a Hartford license. In 1935 Hartford sued the Florida Glass Company, a Miller user, and the case was settled by Florida Glass Company transferring title to its Miller machines to Hartford and accepting a Hartford license. In the same year, Knox Glass Bottle Company, a Miller user, was threatened with suit by Hartford and then was persuaded to take a Hartford license. Suits were also instituted by Hartford against the remaining Miller users, namely, Jeannette Glass Company and the F. E. Reed Glass Company, both of which suits are now pending. In each instance suit was brought or threatened pursuant to the agreement made by Hartford with Owens, and Hartford and Owens shared the expense of litigation and any acquisitions.

79. Prior to December 1924 Hartford and Owens unsuccessfully negotiated for the purchase of the Tucker, Reeves and Beatty feeder patents. Owens, pursuant to its agreement with Hartford then filed one suit against Federal Glass Company (a user of machines developed under the

Tucker, Reeves and Beatty patents), and a second suit [fol. 33] against Tucker, Reeves and Beatty, claiming that their feeders infringed the Lott patent. In 1925 Hartford acquired the Tucker, Reeves and Beatty patents as a cost of $1,600,000 and Owens dismissed the two suits. The expense of the suits and the cost of the purchase of the patents were shared equally by Hartford and Owens.

80. In order to avoid any question of estoppel if Owens or Hartford had title to the Tucker, Reeves and Beatty patents at a time when either Owens or Hartford brought suit against four glass manufacturers who were licensees under such patents, Hartford and Owens in 1925 organized the Feeder Patents Company under the laws of the State of Delaware (Hartford and Owens each owning one-half of the stock of this Company, and each having two directors in said Company), and the Tucker, Reeves and Beatty feeder patents were transferred to this new company. Within a short time thereafter, the four Tucker, Reeves and Beatty licensees, Capstan Glass Company, Hart Glass Company, Hemingray Glass Company, and Winslow Glass Company, were threatened with suits by Owens. At the time that Owens made the said threats it did not disclose to any of the companies to whom the threats were addressed the facts with respect to the transfer of the Tucker, Reeves and Beatty patents to the Feeder Patents Company and the ownership of one-half of the stock of such company by Owens. Thereafter each of the Tucker, Reeves and Beatty licensees either became licensees of Hartford or were absorbed by Owens. The Feeder Patents Company was then dissolved and all of its assets were transferred to Hartford.

[fol. 34] 81. In 1926 Hartford, pursuant to the agreement with Owens, brought suit against Nivison-Weiskopf Company, alleging that the latter's feeder infringed Hartford's "phase change" patent No. 1,573,742, invented by defendant Peiler. In 1932, while an appeal was pending from a district court decision partly in favor of Hartford, the General Glass Company, a Hartford licensee, purchased the assets of Nivison-Weiskopf Company for $150,000, pursuant to an agreement between General Glass and Hartford that the infringement claim would be settled and that Hartford would buy the Nivison-Weiskopf patents from General Glass. The elimination of the competing Nivison-Weiskopf feeder was completed in 1932 by the transfer of

the patents to Hartford. Hartford and Owens shared the expense of the litigation and of the acquisition of the Nivison-Weiskopf patents. Existing Nivison-Weiskopf licensees were either eliminated from competition or because licensees of Hartford. For exemple, on March 17, 1936, Rawleigh Glass Company sold to Owens its feeder equipment, which had been previously obtained by Rawleigh Glass Company from Nivison-Weiskopf on the condition that Owens would assume all claims for damages caused by any infringement by Rawleigh of Hartford patents. Hartford never called upon Owens to pay damages for any infringements by Rawleigh.

82. In 1925 there was pending before the United States Patent Office the application by defendant Peiler for the so-called "stuffing" patent. In 1925 Owens and Hartford decided to prepare themselves and to have published an [fol. 35] article which would appear to be written by a "disinterested authority" for the purpose of influencing the decision of the United States Patent Office in considering this application, and at the same time to conceal or suppress the real origin of this article. The article was written by representatives of Hartford and Owens; was submitted to the executives of Hartford and Owens for their approval; and was then submitted to one William P. Clarke, President of the American Flint Glass Workers' Union, who accepted the authorship of the article. A representative of Hartford then arranged to have the article published in the April 17, 1926, issue of National Glass Budget, a trade paper. Thereafter defendant Peiler and the attorneys for Hartford appeared before the United States Patent Office and referred in detail to the "Clarke article" in filing certain amendments to Peiler's patent. There was never any disclosure by defendants Peiler or Hartford to the Patent Office that the article was inspired and written by Hartford (employer of Peiler) and Owens. In 1928 the Peiler "stuffing" patent No. 1,655,391 issued and was assigned to defendant Hartford. Thereafter, in 1932, in connection with a suit (hereinafter referred to) by Hartford against Hazel-Atlas, reference was made by Hartford to the "Clarke article." The Circuit Court of Appeals for the Third Circuit in its decision (*Hartford-Empire Company* v. *Hazel-Atlas Glass Company*, 59 F. (2d) 399) cited the "Clarke article," and based its finding in a large

measuse on the information contained in the article. There was no disclosure by defendants Hartford or Peiler to the [fol. 36] Circuit Court of Appeals of the inspiration and origin of the "Clarke article."

83. In 1926 Hartford, pursuant to the agreement with Owens, began a series of feeder patent infringement suits (Owens sharing the expense) against the Obear-Nester Glass Company. Uuon institution of the first Hartford suit, Obear-Nester changed from its challenged plunger feeder, eventually determined to infringe Hartford patents, to an air feeder developed for it by one Stuckey. Thereupon Hartford filed a second suit against Obear-Nester, alleging that the Stuckey air feeder infringed Hartford air-feeder patents. The second suit was determined in favor of Obear-Nester, whereupon Hartford filed a third suit, claiming that the Stuckey air feeder infringed Hartford's Peiler "phase change" patent. To date this litigation, which is still pending, has cost Obear-Nester about $200,000.

84. In 1926 Hartford, pursuant to its agreement with Owens, brought a feeder patent infringement suit (Owens sharing the expense) against the Kearns-Gorsuch Bottle Company, a wholly owned subsidiary of defendant Hazel-Atlas Glass Company. Kearns-Gorsuch's feeder was found to be infringing Hartford's Peiler "phase change" patent.

85. In 1927 O'Neill Suction Machine Company and Knox Glass Bottle Company jointly developed the Knox-O'Neill suction machine. Thereupon Hartford and Owens, pursuant to the agreement between them, started separate and independent suits against O'Neill Suction Machine Company, claiming that the Knox-O'Neill suction machine infringed their respective patents. Finally, in 1933, O'Neill Suction Machine Company was induced by [fol. 37] Hartford and Owens to sell its patent rights to Hartford and Owens, which jointly shared the expense. Such rights related not only to suction machines but also to gob-feeders and forming machines. The gob-feeder and forming machine rights were given to Hartford, and the suction machine rights were given to Owens. The Knox Glass Bottle Company was threatened with oppressive and extensive litigation by Hartford and thus was coerced to sell its suction machines to Hartford and to take a Hartford license under Hartford's feeding machines.

86. In 1933 Hartford and Owens, through defendant Lynch as hereinafter described, purchased the patent rights of Ed Miller Machine and Mold Company. Said rights related to gob-feeders, forming machines, and suction machines. The gob-feeder and forming-machine rights were given to Hartford and the suction-machine rights were given to Owens.

87. In 1934 Hartford induced Capstan Glass Company to enter into an agreement for the suppression of the commercial exploitation of the Capstan feeder developed by that company. Under said agreement Capstan Glass Company was licensed to use a limited number of Capstan feeders in its own plants upon payment of royalties to Hartford. Ownership of the machines was transferred to Hartford.

88. In 1934 Hartford and Owens were unsuccessful in attempting to purchase the business of Amsler-Morton Company, their major competitor in the manufacture and distribution of lehrs for the production of glass containers. Thereupon Hartford instituted suit, as hereinafter alleged, against Swindell Brothers, Inc., claiming that the Amsler-[fol. 38] Morton lehrs used by Swindell Brothers infringed Hartford patents.

89. In 1937 Hartford, as hereinafter alleged, acquired the Nagle lehr developed for defendant Thatcher by one Claude Nagle. Hartford claimed that the lehr infringed its patents.

90. In addition to the suits referred to above, Hartford, pursuant to its agreement with Owens, has brought infringement suits against Carr-Lowrey Glass Company, Tygart Valley Glass Company, Shawkee Manufacturing Company, Glenshaw Glass Company, McKee Glass Company, McLaughlin Glass Company, and Washington Mold Machinery and Foundry Company. These suits, other suits already referred to, additional suits brought by Owens and miscellaneous acquisitions by purchase have resulted in the substantially complete elimination of glass-container machinery not owned or licensed by Hartford and Owens. Hartford infringement suits are now pending against Obear-Nester Company and F. E. Reed Glass Company, two of the three remaining independents in the glass-container industry. These various suits referred to in this

paragraph were brought by Hartford pursuant to its agreement with Owens, and Owens shared the expenses in connection with such suits.

91. In furtherance of its purpose to acquire a complete monopoly of all patents on glassware machinery, Hartford engaged in the following tactics in addition to the practices hereinbefore alleged:

(a) Hartford's inventors acquired patents in order to "block" the development of machines which might be con- [fol. 39] structed by others for the same purposes as Hartford machines but using different methods.

(b) Hartford applied for patents on improvements of machines manufactured by competitors in order to prevent such competing machines from reaching an improved stage in competition with Hartford machines, thereby "fencing in" the machines of the competitors.

(c) When an interference was filed in connection with an application by a Hartford inventor for a patent on glass-making machinery, Hartford caused the proceedings in the Patent Office to be delayed and protracted so as to wear down and exhaust competitors and potential competitors by harassing, expensive, and burdensome patent proceedings.

(d) When interference was filed in connection with an application by a Hartford inventor for a patent on glass-making machinery, Hartford caused the determination of its inventor's priority and the issuance of the patent to be delayed and protracted. Competitors and potential competitors of Hartford were deterred from using inventions and devices which were covered or claimed to be covered by the Hartford applications because upon issuance of the patent they would be exposed to litigation which would destroy the business built up on the basis of such device or invention. By these tactics Hartford obtained an extension of the patent privilege for a longer period than the seventeen years provided by the patent law.

(e) While protracting and delaying the issuance of patents on basic inventions, Hartford obtained the issuance of patents on improvements of machinery, and then proceeded [fol. 40] to institute litigation based on such improvements. Meanwhile Hartford delayed issuance of basic patents on

the same machinery for several years, thereby extending its patent protection beyond the period provided for by statute.

February 4, 1931 amendment to 1924 agreement between Hartford and Owens

92. On February 4, 1931 Hartford and Owens entered into an agreement amending the April 9, 1924 agreement by substituting for Section 22 as it existed under the original agreement (and as summarized in paragraph 69 hereof) a provision that Hartford could grant licenses under all inventions under the agreement without the consent of Owens.

93. The February 4, 1931 amendment to the April 9, 1924 agreement was occasioned by the fear that Section 22 of the original agreement violated the antitrust laws and was consented to by Owens only because it trusted Hartford not to license the production of glass containers in a manner harmful to the interests of Owens and because it relied upon Hartford not to license the production of glass containers without first consulting Owens. Notwithstanding the amendment of February 4, 1931, Hartford continued and now continues to consult Owens in connection with applications made to Hartford for licenses to produce glass containers, and only grants such licenses upon the consent of Owens.

Hartford, Owens and Hazel-Atlas agreements, July 1, 1932

94. In July 1932 defendants Owens and Hartford, in carrying out the conspiracy, monopoly, and combination in [fol. 41] restraint of trade hereinbefore alleged, and for the purpose of securing, maintaining, strengthening, and extending the said conspiracy, monopoly, and combination in restraint of trade, induced defendant Hazel-Atlas, the second largest manufacturer of glass containers in the United States, to join the said combination and conspiracy.

95. Hartford and Owens, pursuant to their 1924 agreement, sought to compel Hazel-Atlas to become a licensee of Hartford. With this in view, Hartford (Owens sharing the expense) brought suit in 1926 against Kearns-Gorsuch Company, a subsidiary of Hazel-Atlas. Kearns-Gorsuch was a licensee of Hartford but did not use Hartford equipment. By virtue of a provision in the Kearns-Gorsuch license agreement with Hartford, Kearns-Gorsuch was re-

quired to acknowledge the validity of Hartford patents and Owens and Hartford considered that Kearns-Gorsuch could not, therefore, successfully defend a suit brought against it by Hartford. But Hartford only succeeded in sustaining some of its claims in this suit against Kearns-Gorsuch.

96. In 1928 Hartford brought suit (Owens sharing the expense) against Hazel-Atlas, claiming that the feeders developed by Hazel-Atlas infringed Hartford's patent No. 1,655,[illegible]1, the so-called "stuffing" patent, which issued in 1928. After several years of litigation, at a cost to Hazel-Atlas of about $100,000 per year, the Circuit Court of Appeals for the Third Circuit on May 5, 1932 (*Hartford-Empire Company* v. *Hazel-Atlas Glass Company*, 59 F. (2d) 399), held that the Hazel-Atlas feeder infringed Hartford's patent. Hazel-Atlas was then considering an application [fol. 42] to the Supreme Court for a writ of certiorari.

97. Hartford and Owens then entered into negotiations with Hazel-Atlas with a view towards (a) licensing Hazel-Atlas under the Hartford feeders and thereby eliminating the largest manufacturer of glass containers that was not within the Hartford sphere, (b) avoiding the possibility of a final determination in the Supreme Court of the validity of the Hartford patents which were the subject of the pending suit referred to in paragraph 96 hereof, (c) precluding the possibility that Hazel-Atlas, through others, might continue to contest the validity of the Hartford patents in courts other than the Circuit Court of Appeals for the Third Circuit, and (d) extending Hartford's licenses to smaller independent manufacturers of glass containers who were in a position similar to that of Hazel-Atlas and who would follow the lead of Hazel-Atlas.

98. As a result of these negotiations, Hazel-Atlas and Hartford on July 1, 1932 entered into two agreements, one entitled "General License Agreement," and the other "Supplemental Agreement."

99. On the same day, July 1, 1932, Hartford and Owens entered into three agreements entitled (1) "General License Agreement"; (2) "Suction Inventions License Agreement"; (3) "Agreement for Cancellation and Reinstatement of Contracts and for Division of Income from Tucker, Reeves, and Beatty, Licensees."

100. Under the July 1, 1932 General License Agreement between Hartford and Hazel-Atlas, Hartford granted Hazel-[fol. 43] Atlas a nonassignable and nondivisible license to make and use feeding and forming machines under Hartford's patents and inventions for the manufacture of glass containers, and Hazel-Atlas granted Hartford a divisible and assignable license to make and use forming and feeding machines under Hazel-Atlas patents and inventions. The respective licenses were to run until January 3, 1945, and covered all future as well as existing inventions acquired or controlled by either party prior to that date. Hazel-Atlas agreed not to contest the validity of the Hartford patents and inventions. The license from Hartford to Hazel-Atlas specifically excluded Hazel-Atlas from using Hartford patents in the pressed and blown glassware field which was reserved to defendant Corning.

101. Under the Hazel-Atlas and Hartford General License Agreement of July 1, 1932, Hazel-Atlas agreed to pay Hartford $1,000,000 for alleged back royalties, and agreed to pay royalties to Hartford on all inventions licensed by the agreement and used by Hazel-Atlas including Hazel-Atlas inventions licensed to Hartford. Hartford agreed to pay Hazel-Atlas annually one-third of its "net income," such "net income" being defined in the same way as "divisible income" was defined in the Hartford-Owens agreement of April 9, 1924, except that Hartford's exemption was increased from $600,000 to $850,000.

102. Under the General License Agreement of July 1, 1932 between Hartford and Owens, the April 9, 1924 agreement between the same parties was cancelled and Hartford granted Owens a nonassignable and nondivisible license to make and use Hartford feeding and forming machines for [fol. 44] the manufacture of glass containers, and Owens gave Hartford a divisible and assignable license to make and use Owens feeding and forming machine, excluding the Owens suction machine. The respective licenses covered not only inventions presently owned but also inventions acquired or controlled by either party prior to January 3, 1945.

103. Under the new General License Agreement of July 1, 1932, Owens agreed to pay Hartford royalties, at a rate not greater than the lowest rate to others, on all feeding and

forming machines (excluding the Owens suction machine) used by Owens (the limited exemption in the 1924 contract being removed), and Hartford agreed to pay Owens annually one-third of its "net income," instead of one-half as formerly, such "net income" being defined in the same way as in the Hartford-Hazel-Atlas General License Agreement of July 1, 1932.

104. Under the July 1, 1932 "Suction Invention License Agreement" between Hartford and Owens, Hartford granted Owens, royalty free, a nonassignable and nondivisible license to use all machines and apparatus then owned by Owens involving suction inventions of Hartford, and also a license to make and use all reproductions thereof whenever made. By section 3 of said agreement Hartford agreed that before licensing any of its suction inventions, either then owned or acquired prior to January 3, 1945, Hartford would first offer to Owens the option to take a nonexclusive license, an exclusive license, or the right to purchase the invention.

[fol. 45] 105. The purpose and effect of the provisions of the General License Agreement of July 1, 1932, between Hartford and Owens, and the General License Agreement of July 1, 1932, between Hartford and Hazel-Atlas, with regard to the payments to be made by Hartford to Owens and to Hazel-Atlas, respectively, were to entitle Owens and Hazel-Atlas to share in the royalties of license fees paid by their competitors, who were thus placed at a disadvantage in competition with Owens and Hazel-Atlas.

106. The existence of these agreements by which Owens and Hazel-Atlas shared in the royalties and license fees paid by their competitors to Hartford was unknown to the competitors of Owens and Hazel-Atlas at the time and continued to be unknown to their competitors up to December 1938, when such information was disclosed in connection with hearings before the Temporary National Economic Committee.

107. Furthermore, the existence of the agreement between Hazel-Atlas and Hartford, by which Hazel-Atlas shared in the royalties and license fees, was not even disclosed by Hartford or Hazel-Atlas to Brockway Glass Company, which had an agreement with Hazel-Atlas that Hazel-

Atlas would prosecute the patent litigation against it by Hartford to a final determination or obtain a settlement for Brockway Glass Company on the same terms as Hazel-Atlas obtained from Hartford. Hartford in fact knew of the existence of the agreement between Hazel-Atlas and Brockway and, nevertheless, Hartford falsely represented to Brockway that Hartford was giving Brockway a license on the same terms as Hazel-Atlas.

[fol. 46] 108. The amounts paid by Hartford to Owens and Hazel-Atlas, respectively, under the 1932 agreements substantially exceeded the royalties paid by Owens and Hazel-Atlas, respectively, to Hartford under these same agreements.

109. The effect of the July 1, 1932 agreements between Hartford and Owens was to reaffirm the April 9, 1924 agreement between them. Owens continued to recognize the dominance of Hartford in the field of licensing glass machinery, and Hartford recognized the dominance of Owens in the manufacture of glass containers. Owens accepted a reduction in the payments by Hartford to it in order to permit Hartford to enter into the agreements of the same date with Hazel-Atlas. Owens recognized the desirability of having Hazel-Atlas, its principal competitor, become a Hartford licensee in order to eliminate Hazel-Atlas from uncontrolled and free competition.

110. The effect of the July 1, 1932 agreements between Hartford and Hazel-Atlas was to take in as a Hartford licensee the then largest independent manufacturer of glass containers, thereby aiding and extending the domination and control by Hartford of the licensing of glass-container machinery. The immediate result of licensing Hazel-Atlas was the acceptance by other independents of Hartford licenses. For example, Brockway Glass Company and Knox Glass Bottle Company each accepted (Knox in August 1932 and Brockway in January 1933) a license from Hartford only because Hazel-Atlas had taken a license from Hartford. Knox Glass Bottle Company, and the four operating companies affiliated with it, were collectively the fourth largest [fol. 47] group manufacturing glass containers in the United States. This group would not have taken a license from Hartford and paid $100,000 in notes for alleged back royalties if Hazel-Atlas had not entered into the agreement

with Hartford. Similarly Brockway Glass Company, with its agreement with Hazel-Atlas that Hazel-Atlas would prosecute the patent infringement suit against it by Hartford to a final determination or obtain for Brockway Glass Company a settlement on the same terms as Hazel-Atlas made with Hartford, would not have taken a license from Hartford and paid $10,000 for alleged back royalties if Hazel-Atlas had not entered into an agreement with Hartford. The acceptance by Hazel-Atlas of a Hartford license also eliminated the possibility that Hazel-Atlas, with its substantial resources, might either press a petition for a writ of certiorari in the litigation referred to in paragraph 93 hereof, resist the Hartford patent claims through courts of other circuits in the United States, or perfect inventions to circumvent the Hartford patents. The capitulation of the Knox group of companies to Hartford eliminated the possibility of the fourth largest manufacturer of glass containers resisting the Hartford patent claims in the courts, or perfecting means to avoid the Hartford patents.

Hartford-Lynch agreement, 1933

111. On or about August 23, 1933, defendants Owens and Hartford, in carrying out the conspiracy, monopoly, and combination in restraint of trade hereinbefore alleged, induced defendant Lynch to join the combination and conspiracy for the purpose of securing, maintaining, strengthening, and extending (1) a monopoly of patents on glass-forming machinery, (2) control of the issuance of licenses thereunder, and (3) restraint of interstate trade and commerce in such machinery and in the production and distribution of glassware. [fol. 48]

112. For ten years prior to 1927 defendant Lynch Corporation marketed an automatic forming machine which was considered the standard former in the United States. In 1927, 70% of the narrow-neck bottling-machine formers in use were Lynch machines. Prior to 1927 Hartford decided that if it could obtain control and domination of patents and inventions relating to forming machines, its dominating position as the licensor of glass-container machinery would be enhanced and its domination of the glass-container industry increased. This was the principal reason why Hartford, as hereinbefore alleged (in paragraphs 75 and 76), purchased the Sears and Lobb application in 1925 for

$40,000 and obtained an option on the Headley and Thompson patent applications for glass-forming machinery which were pending in the United States Patent Office.

113. Between 1927 and 1933, defendants Lynch and Hartford engaged in an extended controversy, at a cost to defendant Lynch of approximately $250,000, regarding the priority of the respective patents for forming machinery in which they had interests. In June 1933 the United States Patent Office granted priority to the Headley and Thompson applications. On September 19, 1933 Hartford exercised its option and bought these patents from Whitall Tatum Com-
[fol. 49] pany for $200,000. One-half of the expense in connection with the controversy between Hartford and Lynch and one-half of the expense of acquiring the Headley and Thompson patents were paid by Owens.

114. On August 23, 1933 defendants Lynch and Hartford entered into an agreement by which Lynch granted to Hartford a nonexclusive license with regard to its forming patents and inventions and Hartford granted to Lynch a nonexclusive license under Hartford's patents and inventions for forming machines.

115. Under the agreement referred to in Paragraph 114 hereof, defendant Lynch was licensed by Hartford to make and deliver forming machines, embodying Hartford inventions, to anyone that had obtained from Hartford a license under Hartford's forming-machine inventions.

116. Although the 1933 agreement between Hartford and Lynch was not specific as to Lynch's right to sell forming machines to glass manufacturers that did not have a feeder license from Hartford, thereafter, pursuant to an understanding between Hartford and Lynch, Lynch refused to sell forming machines to persons not having a feeder license from Hartford.

117. Under the 1933 agreement between Hartford and Lynch, a purchaser of a forming machine from Lynch, must, in addition to agreeing to pay Lynch the purchase price of the machine, obtain a "former license" from Hartford. Under such license agreement from Hartford, the purchaser of the Lynch forming machine agrees to pay Hartford royalties at Hartford's regular feeder rates on the glassware
[fol. 50] produced with the Lynch forming machine pro-

vided, however, that if the purchaser of the forming machine already has a license from Hartford for a Hartford feeder the purchaser is relieved of the royalty payment. In other words, a purchaser of a Lynch forming machine who uses the forming machine in connection with a Hartford feeder is only required to pay the purchase price of the machine but if the purchaser were to use such machine in connection with a feeder other than a Hartford feeder, then the purchaser must pay Hartford the regular royalty rates as if the purchaser was operating a Hartford feeder under a Hartford license.

118. The purpose and effect of the agreement between Hartford and Lynch is to compel a purchaser of a forming machine from Lynch to use a Hartford feeder.

119. Subsequent to the agreement referred to in Paragraph 114 hereof, defendants Owens, Hartford, and Lynch continued to combine and to conspire for the purpose of restraining interstate trade and commerce in glass-forming machinery.

120. In 1937 Hartford, Owens, and Lynch combined to acquire the patent rights of their remaining competitors in the production of forming machines. Pursuant to that combination, Lynch, with funds supplied by Hartford and Owens, purchased the patent rights of their remaining competitors in the production of forming machines, to wit, O'Neill Suction Machine Company and Ed Miller Machine and Mold Company, and transferred certain of said patents to Hartford and certain of said patents to Owens.

121. By reason of the aforesaid, Hartford, Owens, and Lynch achieved a virtual monopoly and dominating position [fol. 51] with respect to patents covering glass-forming machinery in the United States and with respect to the manufacture and distribution of such machinery.

Elimination of Competition in Lehrs

122. Prior to 1934 defendants Hartford and Owens, for the purpose of securing, maintaining, strengthening, and extending the conspiracy, monopoly, and combination in restraint of trade heretofore alleged, combined and conspired to monopolize patents covering glass lehr machinery and to control the issuance of licenses thereunder for the

purpose of restraining interstate trade and commerce in such machinery and in the production and distribution of glassware.

123. In 1934 Hartford and Owens attempted to purchase (the offer being made by Owens) the business of Amsler-Morton Company, their major competitor in the manufacture of lehrs for the production of glass containers. Thereupon, Hartford instituted suit against Swindell Brothers, Inc., claiming that the Amsler-Morton lehrs used by Swindell Brothers infringed Hartford patents. Swindell Brothers had previously also licensed lehrs from Hartford under an agreement not to contest the validity of Hartford patents. As a result, Amsler-Morton Company, in defending Hartford's suit against Swindell Brothers under its agreements to save its customer harmless, was limited to a passive defense of noninfringement, and was unable actively to contest the validity of the Hartford patents. The Circuit Court of Appeals for the Fourth Circuit (*Hartford-Empire Company* v. *Swindell Brothers, Inc.* (96 F. (2d) [fol. 52] 227 (1938) modified by 99 F. (2d) 61 (1938)), reversed a decision of the District Court (18 F. Supp. 191), and held that the Amsler-Morton lehr infringed Hartford patents. The Supreme Court denied a petition for a writ of certiorari. Amsler-Morton has since manufactured and sold one lehr.

124. Prior to 1937 Hartford had claimed that the Nagle lehr developed for the defendant Thatcher infringed the Hartford lehr patents. Hartford in 1937 purchased from Thatcher its patent rights in respect to the Nagle lehrs.

125. By means of the aforesaid, Hartford and Owens achieved a virtual monopoly and dominating position with respect to patents covering lehrs used in the manufacture of glassware in the United States and with respect to the manufacture and distribution of such lehrs.

1935 Hartford-Owens Agreements

126. By agreement dated September 30, 1935 between Owens and Hartford, Owens' right to one-third of Hartford's yearly income from patented inventions was terminated, and Owens and its subsidiary Owens-Illinois Pacific Coast Company granted Hartford a divisible and assignable license, without royalty, to make and use all feeding

and forming machine inventions of Owens and its subsidiary (except the Owens suction machine) whether presently owned or acquired prior to January 3, 1945. In consideration therefor, Hartford paid Owens $2,500,000.

127. By agreement of October 1, 1935, Hartford granted Owens a nonassignable and nondivisible license to make, use, and vend Hartford feeding and forming machine inven- [fol. 53] tions, whether presently owned or acquired prior to January 3, 1945, at a royalty rate no higher than the lowest rate accorded to any other licensee. By another agreement of the same date Hartford granted Owens a nonassignable and nondivisible license, royalty free, to make and use Hartford suction inventions, whether presently owned or acquired prior to January 3, 1945. A supplementary agreement of the same date entitled "Consolidated Lehr Agreement" contained cross licenses by Hartford and Owens of their respective lehr inventions. Additional supplementary agreements of the same date entitled "Consolidated Feeder and Former License and Lease Agreement" and "Consolidated Stacker and Conveyor Agreement" described in detail the individual license agreements to be executed by Owens with respect to particular Hartford machines.

Hartford-Owens-Thatcher-Liberty Agreements Regarding Milk Bottles

128. Subsequent to 1916, and between 1928 and the present time, defendants Hartford and Owens, in order to carry out the conspiracy, monopoly, and combination in restraint of trade hereinbefore alleged, and to maintain, strengthen, and extend the said conspiracy, monopoly, and combination in all of its aspects and particularly insofar as it related to patents covering machinery for the manufacture of milk bottles, the manufacture and distribution of such machinery, and the manufacture and distribution of milk bottles, induced the defendants Thatcher and Liberty to join the combination and conspiracy for all purposes and [fol. 54] particularly for the purpose of controlling and dominating the issuance of licenses to manufacture milk bottles, and of monopolizing and restraining interstate trade and commerce in the manufacture and distribution of milk bottles.

129. In 1908 defendant Thatcher acquired from Owens an exclusive license for the use of the Owens suction machine in the production of milk bottles, Owens guaranteeing that it would not license other milk-bottle producers on this machine.

130. In 1916 Hartford licensed four companies to produce milk bottles on its first, the so-called "paddle" feeder machines. In 1920 defendant Thatcher acquired the stock and assets of three of these companies, namely, Essex Glass Company, Travis Glass Company, and Lockport Glass Company for $1,637,000. The same year, Thatcher entered into an agreement with the fourth licensee, namely, J. T. A. Hamilton Company, by which Thatcher for $100,000 acquired title to the machinery used by the Hamilton Company, and the Hamilton Company agreed to limit its production to milk bottles to be distributed in Allegheny County, Pennsylvania. This agreement has been in force since 1920 and is in force today.

131. On December 8, 1920 Hartford agreed with Thatcher not to license any other milk-bottle producers in the United States to use Hartford's "paddle" feeder.

132. During the period from 1922 to 1928, Thatcher procured licenses from Hartford to manufacture milk bottles on another type of feeder which Hartford was developing, namely, the so-called "single feeder." At various times, [fol. 55] particularly in 1925 when Hartford's single-feeder machine was perfected, Thatcher complained to Hartford that it was entitled to an exclusive license to use the Hartford single-feeder machines for milk bottles. In 1926 Hartford assured Thatcher that Thatcher would be given "every consideration" in the granting of other licenses and that such licenses would not be granted without considering Thatcher's "side of the case."

133. Under date of April 13, 1928 Hartford and Thatcher entered into an agreement entitled "Consolidated Agreement" by the terms of which Hartford granted Thatcher an exclusive right to use Hartford's paddle needle feeders for the manufacture of milk bottles, and Thatcher was given the right to lease as many Hartford single feeders as it desired. In addition, Thatcher was granted an option on any exclusive license that should be offered by Hartford for milk-bottle production on single-feeder equipment.

134. In 1930 Owens acquired Berney-Bond Glass Company, which had an unrestricted license to manufacture milk bottles on Hartford feeders.

135. In December 1932 Thatcher acquired the milk-bottle business, machinery and license rights of Knox Glass Bottle Company. Prior thereto in August 1932 Hartford had granted a license to the Knox Company which provided that Knox's annual production of milk bottles should be limited to 75,000 gross notwithstanding that, prior to the license, Knox had been manufacturing and selling on an average from 100,000 to 150,000 gross milk bottles per year. This [fol. 56] limitation on milk-bottle production in the Hartford license to Knox resulted in Knox's milk-bottle business becoming unprofitable and Knox, with the consent and approval of defendant Hartford, sold its milk-bottle business and certain machines and molds in connection therewith to defendant Thatcher for (1) $75,000 in cash; (2) $175,000 in milk bottles which Knox promptly sold for cash in about the same amount; and (3) 15,000 shares of common stock of Thatcher having an aggregate market value of approximately $105,000.

136. In 1933 Thatcher purchased Peerless Glass Company, a manufacturer and distributor of milk bottles.

137. By 1934 defendant Liberty Glass had acquired an unrestricted license from defendant Hartford for the manufacture of milk bottles which it distributed in various parts of the southwest, including Texas. In 1934 Knape-Coleman Company began manufacturing and selling milk bottles in Texas in competition with defendant Liberty Glass. At the request of defendant Liberty Glass, Hartford notified Knape-Coleman that its machinery infringed the Hartford patents. Knape-Coleman asked Hartford for a license to manufacture milk bottles at the usual royalty rate but Hartford refused this request. Then Hartford instituted a suit against Knape-Coleman for alleged infringement. This suit was settled by Knape-Coleman delivering its feeder machines to Hartford. Within a year Knape-Coleman went out of business.

138. By agreement of January 1, 1936 between Thatcher and Hartford, existing licenses from Hartford to Thatcher were renewed. Thatcher was given the exclusive right to

[fol. 57] use the Hartford "Two Table" milk-bottle forming machine and the right to obtain as many additional Hartford "single" feeders as it desired at a rate no higher than the lowest rate charged to the other licensees.

139. With the exception of the licenses to defendants Owens, Thatcher, and Liberty Glass, the licensees of Hartford that are authorized to manufacture milk bottles under Hartford patents are restricted in their production.

Florida Glass Manufacturing Company.—Limited by its license agreement of August 2, 1935 to 27,500 gross milk bottles annually.

Buck Glass Company.—Limited to 70,000 gross annually under its January 11, 1926 license agreement with an additional 10,000 gross annually for any sales outside of the United States.

Universal Glass Products Company.—Limited under its license agreement of September 15, 1932 to 100,000 gross annually of milk and cream bottles and cheese jars, with a qualification in the agreement that if the gross annual sales of the United States of all such milk and cream bottles and cheese jars exceeded 1,750,000 gross per year, then Universal would be entitled to produce 6% of the established total sales.

Lamb Glass Company.—Restricted by its license agreement of November 10, 1932 (supplemental agreement January 24, 1933) to a production of milk and cream bottles and cheese jars that can be produced annually by 23,725 tons of glass with the qualification that if the gross production in the United States of all such bottles and jars [fol. 58] is 2,600,000 gross per year or more, then Lamb may produce 10% of the total annual gross sales in the United States.

140. In addition, in several instances Hartford has licensed the manufacture of bottles with specific provisions that the bottles were not to be sold to a dairy. For instance, in the April 16, 1923 license to J. T. A. Hamilton Company (renewed April 16, 1931), the licensee is authorized to manufacture bottles for malted and chocolate milk provided the bottles are not sold to a dairy; the agreement with the Glenshaw Glass Company of October 8, 1928 (renewed October 3, 1936) limits the production of chocolate-milk bottles for sale only to soft-drink manufacturers

if such bottles are similar in appearance to milk bottles; and the agreement with Glass Containers, Inc. of July 28, 1929 (renewed July 29, 1937) provides that the licensee is authorized to manufacture chocolate beverage jars and bottles but not jars and bottles for milk, and the licensee agrees to mark the jars and bottles with a legend that they are to be used for purposes other than for milk.

141. Hartford has refused from time to time to license additional milk-bottle production in order to protect Owens, Thatcher, and Liberty from competition. In March 1925, Hartford refused to grant a license to manufacture a general line of milk bottles to Ross Wilson of Winchester, Indiana; in September 1925, Hartford refused to grant a license to manufacture milk bottles to St. Albans Glass Company of St. Albans, West Virginia; in September 1925, Hartford refused to license Old Dominion Glass Company [fol. 59] to manufacture milk bottles; in October 1930, Hartford refused a license to Witherspoon-Simpson Glass Company of Arkansas to produce fruit jars and milk bottles; in October 1931, Hartford refused a license to the Glass Syndicate of Colorado to produce milk bottles and beverage ware; in December 1932, Hartford refused licenses to P. J. Heeley and to W. R. Ludlum, each of whom were interested in obtaining a license to produce beverage and milk bottles on the West Coast; and in July 1933, Hartford refused a license to F. W. Ball of Washington, D. C., who was interested in manufacturing beverage bottles and milk bottles.

142. By reason of the foregoing, the defendants Owens, Thatcher, and Liberty Glass have monopolized and are monopolizing the manufacture and distribution of glass milk bottles in the United States, and have restrained and are restraining interstate trade and commerce in the manufacture and distribution of glass milk bottles. Hartford, through its dominant control of the patents and its licensing policies, has aided and abetted, and is aiding and abetting, such monopoly and restraint of trade and commerce.

Hartford, Owens, Hazel-Atlas-Ball Brothers Agreements

143. In March 1933, defendants Hartford, Owens, and Hazel-Atlas, in order to carry out the conspiracy, monopoly,

and combination in restraint of trade hereinbefore alleged, and to maintain, strengthen, and extend the said conspiracy, monopoly, and combination in all of its aspects and particularly insofar as it related to patents covering machinery for the manufacture of fruit jars, the manufacture and distribution of such machinery, and the manufac- [fol. 60] ture and distribution of fruit jars, induced the defendant Ball Brothers to join the combination and conspiracy for all purposes and particularly for the purpose of controlling and dominating the issuance of licenses to manufacture fruit jars, and to monopolize and restrain interstate trade and commerce in the manufacture and distribution of fruit jars.

144. For a number of years prior to 1912 defendant Ball Brothers manufactured domestic fruit jars and in the year 1912 it, with the consent of Owens, acquired an existing license to use Owens' suction machines. Under date of November 2, 1924, when this existing license agreement expired, Ball Brothers entered into an agreement with Owens by which Owens gave Ball Brothers an exclusive license to use the Owens suction machine for the purpose of manufacturing fruit jars.

145. Ball Brothers, in order to eliminate competition in the manufacture of fruit jars, acquired in 1925 the business and patents of Schram Manufacturing Company for $5,233,000, and in 1929 the business and patents of the Pine Glass Company for $900,000. In both cases Ball Brothers closed down the plants of these companies.

146. At no time prior to March 25, 1933 did Ball Brothers have a license from Hartford-Empire to use machinery covered by patents owned by Hartford. Between 1912 and March 25, 1933, Ball Brothers developed automatic machinery for the manufacture of fruit jars, and throughout this period it also obtained patents or patent rights covering other automatic machinery for the [fol. 61] manufacture of fruit jars. Ball Brothers claimed that all such machinery, patents, or patent rights were outside of the scope of the Hartford patents and inventions. Throughout this period Ball Brothers operated independently of Hartford and of its patents and consistently attempted to avoid the necessity of operating in any way in

cooperation with Hartford or acknowledging in any way Hartford's dominant position in the industry.

147. Between November 1924 and March 25, 1933, Hartford carried on negotiations with Ball Brothers with the view to inducing Ball Brothers to take a license to manufacture fruit jars on Hartford machinery, but Ball Brothers refused to take a license unless it was an exclusive license to manufacture fruit jars.

148. Prior to March 25, 1933 the principal competitors of Ball Brothers in the manufacture of fruit jars were defendants Owens and Hazel-Atlas, and General Glass Company, each of whom were licensed under Hartford patents. In addition, Hartford had two other outstanding licenses permitting the manufacture of fruit jars: one to Salem Glass Works (which was limited, however, to a less popular "Eureka" jar), and the other to Gayner Glass Works (which was limited to the production of 120,000 gross per year). Knox Glass Bottle Company and Brockway Glass Company were also manufacturing fruit jars on machinery not licensed from Hartford.

149. From time to time prior to March 25, 1933 Hartford refused to grant to others the right to manufacture glass fruit jars because it desired to keep itself free to offer inducement to Ball Brothers to become a party to [fol. 62] the conspiracy, monopoly, and combination hereinbefore alleged by granting Ball Brothers the protection of an exclusive license from Hartford to manufacture fruit jars. Ball Brothers was interested in acquiring such an exclusive license not because it wished to use Hartford equipment but because it wished to exclude others from manufacturing fruit jars on Hartford equipment.

150. In August 1932, when Knox Glass Bottle Company and its affiliated companies obtained a license from Hartford, such license did not permit Knox to manufacture fruit jars on Hartford's feeders; nevertheless, the Knox group of companies continued to produce and distribute a substantial amount of fruit jars on vacuum-suction machines purchased by Knox from O'Neill Suction Machine Company and perfected jointly by such company and Knox.

151. In order to carry out the conspiracy, monopoly, and combination in restraint of trade hereinbefore al-

leged, and particularly insofar as it related to the manufacture and distribution of fruit jars, defendants Hartford and Ball Brothers in March 1933 coerced and induced the Knox group to enter into two agreements: (1) a formal agreement dated March 23, 1933, under which Knox Glass Bottle Company and four of its affiliated companies, and R. R. Underwood, General Manager of Knox Glass Bottle Company and President of the four affiliated companies, each agreed to stay out of the glass fruit-jar business in continental United States for a period of fifteen years, and the Knox group of companies sold to Ball Brothers all of [fol. 63] their equipment, machinery, molds, and inventory relating to the glass fruit-jar business, and Ball Brothers paid the Knox group $100,000; and (2) oral arrangement confirmed in part by letters dated March 27 and 29, 1933. Hartford, in consideration of the agreement made by the Knox group with Ball Brothers, cancelled $44,000 of the $100,000 of notes of the Knox group which Hartford had received in August 1932 from the Knox group in payment of royalties alleged to be due at the time the Knox group took a license from Hartford.

152. In January 1933, when Brockway Glass Company obtained a license from Hartford, such license did not permit Brockway to manufacture fruit jars on Hartford feeders; nevertheless, Brockway Glass Company continued to produce and distribute a substantial amount of fruit jars on certain machines not licensed from Hartford.

153. In order to carry out the conspiracy, monopoly and combination in restraint of trade hereinbefore alleged, and particularly insofar as it related to the manufacture and distribution of fruit jars, defendant Ball Brothers, with the knowledge and consent of defendant Hartford, coerced and induced Brockway Glass Company, on or about April 27, 1933, to enter into an agreement with Hartford by the terms of which Brockway agreed to discontinue the manufacture of glass fruit jars in continental United States (except Alaska and New Mexico) for a period of fifteen years, in consideration of the payment to it by Ball Brothers of $50,000, and Brockway sold to Ball Brothers for approximately $127,000 all of its equipment, machinery, molds, and inventory relating to the glass fruit-jar business.

[fol. 64] 154. Under date of March 25, 1933, Hartford entered into an agreement with Ball Brothers. Under this agreement, to which Owens and Hazel-Atlas gave their approval, Ball Brothers paid Hartford $400,000, of which $100,000 was to be paid by Hartford for reacquiring from the General Glass Company the Hartford license to it to manufacture fruit jars. Thereafter the license to General Glass Co. to manufacture fruit jars was reacquired by Hartford. Ball Brothers also agreed to pay royalties on the use of Ball Brothers' feeders, which Hartford claimed infringed its patents.

155. Under the March 25, 1933 agreement Hartford agreed not to grant any other license in the United States for the manufacture of fruit jars as long as Ball Brothers paid the minimum royalty payments provided for under the agreement, and Ball Brothers agreed not to sell any of its inventions without first offering to sell such inventions to Hartford, and further agreed not to sell any of its feeder machines without first offering to sell such feeders to Hartford.

156. Contemporaneously with the execution by Hartford and Ball Brothers of the March 25, 1933 agreement, Hartford and Ball Brothers entered into agreements with Owens and Hazel-Atlas, whereby Hazel-Atlas agreed not to produce an excess of 300,000 gross of fruit jars per year and Owens agreed not to produce an excess of 100,000 gross of fruit jars per year. These limitations on the fruit-jar businesses of Owens and Hazel-Atlas were to be operative so long as Ball Brothers was under license to Hartford.

157. Since March 25, 1933 Hazel-Atlas has not produced more than 300,000 gross of fruit jars per year; Owens has [fol. 65] not produced more than 100,000 gross of fruit jars per year; and the Knox group and Brockway Glass Company have not produced any fruit jars.

158. In 1934 the Hartford license held by Gayner Glass Works authorizing it to produce 120,000 gross of fruit jars per year was not renewed, leaving Ball Brothers, Hazel-Atlas, and Owens as the only Hartford licensees in the general fruit-jar field.

159. Prior to 1936 Ball Brothers asked Hartford to stop Three Rivers Glass Company, a Hartford licensee, from

manufacturing fruit jars in violation of the March 25, 1933 agreement between Ball Brothers and Hartford and in violation of the license agreement from Hartford to Three Rivers Glass Company. Hartford repeatedly sent notices to Three Rivers Glass Company to refrain from manufacturing fruit jars. Thereafter, in 1936, Ball Brothers acquired the patents of Three Rivers Glass Company and then closed down its plant.

160. Since the March 25, 1933, agreement Hartford, at the request of Ball Brothers and pursuant to an arrangement made at the time of the March 25, 1933, agreement, has made every effort to restrict and has restricted the manufacture of fruit jars in the United States to Ball Brothers, Owens, and Hazel-Atlas.

161. Since the March 25, 1933 agreement Hartford has refused to license additional fruit-jar production under its patents in order to protect Ball Brothers, Owens, and Hazel-Atlas from competition. For example, in July 1933 Hartford refused a license to C. H. Hubbard to manufacture fruit jars; again in 1933 Hartford refused to license one Pine, who was considering acquiring Interstate Glass Com-[fol. 66] pany, stating that "Ball Brothers are not anxious to have a new competitor springing up beside them"; and in August 1937 Hartford refused a similar request from Sandy Valley Grocery Company. In 1935 in an effort to eliminate the fruit-jar business of F. R. Reed Glass Company, one of the three remaining independent glass-container manufacturers, Ball Brothers urged that Hartford set an early trial of its litigation against the F. R. Reed Glass Company and offered the use of its patents in the litigation in the event that it could be shown that the feeder machinery used by F. R. Reed Glass Company infringed Ball Brothers' patents in any way.

162. Notwithstanding the agreement of March 25, 1933, Ball Brothers has never used a Hartford feeder machine in connection with the manufacture by it of fruit jars and has even refused to purchase forming machines from defendant Lynch because it would have to use Hartford feeders with such machines.

163. The only purpose of the agreements of March 25, 1933 between Ball Brothers and Hartford, between Hartford, Ball Brothers, Owens, and Hazel-Atlas, between Ball

Brothers, Hartford, and the Knox group, and between Ball Brothers and Brockway Glass Company, was to give Ball Brothers, Owens, and Hazel-Atlas a monopoly in the manufacture of glass fruit jars in the United States. In addition, the agreement between Hartford and Ball Brothers eliminated Ball Brothers as a powerful potential competitor in glass-container machinery and precluded the possibility that the competition offered by Ball Brothers might impair, undermine, and weaken Hartford's domination of the [fol. 67] manufacture and distribution of glass-container machinery and of the glass-container industry and thus reaffirmed, extended, and strengthened the conspiracy, monopoly, and combination in restraint of trade hereinbefore described.

164. By reason of the foregoing, the defendants Ball Brothers, Owens, and Hazel-Atlas have monopolized and are monopolizing the manufacture and distribution of glass fruit jars in the United States, and have restrained and are restraining interstate trade and commerce in the manufacture and distribution of glass fruit jars. Hartford, through its dominant control of the patents and its licensing policies, has aided and abetted, and is aiding and abetting, such monopoly and restraint of trade and commerce.

Hartford, Owens and Anchor Hocking relations

165. For a number of years prior to 1931 there were various smaller manufacturers of a general line of glass containers in competition with Owens. The Levis Group, who through the Illinois Glass Company had stock interests in Owens, were desirous of controlling certain of these competitors in order to become "a more dominant factor in the glass-container industry than any other investor in it." Prior to 1931 the Levis Group, through Illinois Glass Co., owned substantial blocks of stock in defendants Hazel-Atlas and Thatcher and also owned a substantial block of stock in Hocking Glass Company, one of the predecessors of defendant Anchor Hocking.

166. Prior to 1931 Turner Glass Company of Indiana, a licensee of Hartford, was put into receivership by Hartford [fol. 68] for nonpayment of royalties. At that time defendant Isaac J. Collins was an officer, director, and stockholder of Hocking Glass Company and a stockholder and director of defendant Hartford.

167. In 1931 Hocking Glass Company and defendants Owens, Hartford, and Thatcher arranged for the reorganization of Turner Glass Company, by organizing General Glass Company to acquire the assets of Turner. One half of the stock of General Glass was acquired by Hocking Glass Company and the other half by Thatcher. In 1935 Thatcher sold its interest in General Glass to Hocking Glass Company and General Glass was then dissolved.

168. As heretofore alleged in paragraph 81 of this complaint, General Glass Company at the request of the defendants Hartford and Owens purchased in 1932 the assets of the Nivison-Weiskopf Company for $150,000 pursuant to an agreement between General Glass and Hartford that an infringement suit theretofore instituted by Hartford against Nivison-Weiskopf Company would be settled and that Hartford would buy the Nivison-Weiskopf patents from General Glass.

169. In 1937 Hartford and Owens, in furtherance of the conspiracy, monopoly, and combination in restraint of trade hereinbefore alleged, induced Hocking Glass Company, Hartford's licensee, and Anchor Cap Company to merge into defendant Anchor Hocking. The Levis Group aided and financed such merger. Defendant Anchor Hocking thus became the third largest manufacturer of glass containers in the United States and joined the conspiracy, monopoly, and combination in restraint of trade.

[fol. 69] The Glass Container Association: production quotas and maintenance of prices

170. In 1919 the defendant Glass Container Association was organized as a trade association for the glass-container industry for the purpose of compiling technical information, publicizing the industry, aiding in the improvement and quality of glass and influencing legislation for the industry. From 1920 to 1928, the Association was under the management of one I. J. Jennings, and since 1928 it has been managed by Charles R. Stevenson, through the defendant Stevenson Corporation, of which he is the head, and by the defendant Emory C. Ackerman, assistant business manager of the Association.

171. Defendants Owens, Hazel-Atlas, Thatcher, Ball Brothers, Liberty Glass, and Anchor Hocking and all glass-

container manufacturers in the United States but two, have each been for some time and now are members of the Association and are actively interested in the work of the Association.

172. Prior to 1928 the Association's activities were limited to the collection and dissemination of statistical data, and the issuance of advertising matter regarding the use of glass. Since 1928 the Association, under the active guidance and direction of defendants Stevenson Corporation, Stevenson and Ackerman, has also been responsible for fixing production quotas for the industry, and the members thereof, and for artificially and arbitrarily fixing, maintaining, and affecting the price of glass containers in the industry.

173. All of the defendants herein, and particularly the defendants Stevenson Corporation, Stevenson and Acker- [fol. 70] man, fixed, maintained, and enforced arbitrary, artificial, and noncompetitive prices for various types of glass containers, prevented the normal price changes which would have resulted in a free and open competitive market by the following means and methods, among others:

(a) The determination by the Association of production quotas based on the prevailing market demand and the assignment of such quotas to individual members of the Association.

(b) The acceptance by the members of the production quotas and their adherence to such quotas.

(c) The action of the defendants Stevenson Corporation, Stevenson, and Ackerman in actively persuading, inducing, and coercing manufacturers of glass containers to observe the production quotas allocated to them by the Association and not to sell any particular type of glass containers at less than the prices fixed and announced by the company acting as the price leader for that type.

(d) Periodic forecasts by the Association of the estimated demands of different types of glass containers.

(e) The transmission by each member to the Association of its production, inventory, shipments, orders, prices, and sales.

(f) The furnishing by the Association to each member of periodic reports covering among other things the total

production of various types of glass containers by the entire industry.

(g) Meetings of the members of the Association and limited groups thereof, including meetings of representatives of Owens, Hazel-Atlas, Thatcher, Ball Brothers, Liberty [fol. 71] Glass, and Anchor Hocking, or some of them.

(h) Periodic examination by representatives of the Association of books and records concerning production, shipments, orders, sales, and prices of members of the Association.

(i) The acquisition by members of the Association of going concerns with designated production quotas solely for the purpose of increasing the quotas of the members of the Association and then promptly closing or dismantling the plants of the companies acquired.

174. From time to time the Association, at the request of Hartford (not a member of the Association) and Owens, has dissuaded new firms from entering the glass-container industry.

175. At all times since 1928, the Association, Stevenson Corporation, Stevenson and Ackerman, have been parties to the conspiracy, monopoly, and combination in restraint of trade hereinbefore alleged and have created, maintained, strengthened, and extended the said conspiracy, monopoly and combination in restraint of trade by the acts and methods hereinbefore alleged.

176. The policy of Hartford and Owens, through the imposition, under license agreements, of production control and the assignment of types of ware, has maintained uniformly high, rigid, and noncompetitive prices in the glass container industry. In addition, Hartford and Owens, with their complete monopoly and domination of patents on glass manufacturing machinery, have stabilized prices in the industry by requiring the leaders in the industry to establish and enforce uniform and noncompetitive prices and by [fol. 72] admonishing and coercing price cutters to maintain said prices.

177. By issuing licenses to manufacture milk bottles to only a few companies and by using the power inherent in the license relationship to prevent other licensees from

selling milk bottles in competition with Owens, Thatcher, and Liberty, defendants Hartford and Owens have maintained artificial, noncompetitive, and high prices for milk bottles.

178. By providing that only Ball Brothers shall have an unlimited license to manufacture fruit jars and by using the power inherent in the license relationship to prevent other licensees from selling fruit jars and by preventing those licensed to produce packers ware from selling packers ware for use as fruit jars in competition with Ball Brothers' fruit jars, defendants Hartford, Owens, and Ball Brothers have maintained artificial, noncompetitive and high prices for fruit jars.

179. The substantial royalties paid by the licensees of Hartford and Owens have also been responsible for artificially high and noncompetitive prices in the glass-container industry.

180. The high prices in the glass-container industry have also been caused by the system of price leadership which the defendants herein have established and agreed upon and maintained and enforced by concerted action. Pursuant to this arrangement defendant Corning is the recognized price leader in the industry for heat-resisting glassware; defendant Owens is the recognized price leader for narrow-mouth glassware which includes proprietary and prescription ware and beverage bottles; defendant Hazel-Atlas is the [fol. 73] recognized price leader for wide-mouth glassware (principally packers' glassware); defendant Thatcher is the recognized price leader in the industry for milk bottles; and defendant Ball Brothers is the recognized price leader for fruit jars. At all times while the said arrangement has been in effect, Hartford has used and is now using its power and domination as the only licensor of automatic glass-making machinery in the United States to enforce this system of price leadership and prevent any manufacturer of glass containers from selling any type of container at less than prices fixed for that type by the price leader.

Espionage and similar tactics by Hartford, Owens, and Corning

181. The defendants Hartford, Owens, and Corning have from time to time throughout the period covered by this petition engaged in industrial espionage and similar tactics

for the purpose of (1) secretly obtaining information with respect to the patents, trade secrets, and manufacturing processes of competitors and their licensees or users, (2) secretly obtaining information which could be used to apply for and obtain patents for improvements in order to "block off" and "fence in" the patents of competitors, (3) preventing the development of new and different methods in automatic glass machinery outside the scope of Hartford patents, (4) discouraging others from developing or attempting to develop competing machinery, (5) obtaining information in order to threaten and conduct oppressive and harassing litigation and (6) harassing, discouraging, [fol. 74] and oppressing all possible competition in the manufacture of automatic glass-making machinery.

182. Hartford's license agreements generally give Hartford the right to enter the licensee's premises in order to examine and inspect the licensee's machinery and equipment. Hartford has exercised its right in such a way as to maintain constant surveillance of its licensees, and to collect data with respect to the licensees' methods of manufacture, the processes used in their plants, the quantity and character of their output and in general to police the restrictive provisions during the life of the license agreement.

183. In December 1928 defendants Hartford and Owens sent their representatives to the Knox Glass Bottle Company plant at Knox, Pennsylvania, which at that time was not a licensee of either Hartford or Owens, for the purpose of secretly obtaining information regarding a newly invented Knox-O'Neill suction machine. In order to obtain this information surreptitiously, the defendants Hartford and Owens at night cut a hole in the roof of the building of the Knox Glass Bottle Company in an attempt to inspect its machinery; thereafter, on the next day, the said representatives entered the building without the knowledge or consent of the responsible executive officers of the Knox Glass Bottle Company and there inspected the machinery in operation. While engaged in this inspection, they were apprehended and ejected by the executive officers of the Knox Glass Bottle Company.

184. In 1936 the defendant Hartford induced a trusted employee of Crown Cork and Seal Company of Baltimore, [fol. 75] Maryland, which was not a licensee of Hartford

or Owens, to admit secretly a representative of Hartford to inspect and examine a new type of machinery invented by an employee of Crown Cork and Seal Company.

185. In 1933 defendant Hartford, after learning of a rumored development of a new forming machine by Capstan Glass Company, which was not then a licensee of Hartford or Owens, conspired with defendant Lynch to send an employee of Lynch to Capstan Glass Company ostensibly to ask for employment but actually to ascertain the nature of the machinery.

186. In 1936 defendant Owens engaged an investigator who set up an ostensible consumers' research bureau in order to inspect the plant of the Knox Glass Bottle Company to ascertain the nature of the machinery of that company.

187. In 1936 defendant Corning sent an investigator disguised as a fire inspector into the plant of a competitor in Newark, New Jersey.

Volume of Business and Profits

188. By reason of the conspiracy, monopoly, and combination in restraint of trade hereinbefore alleged and the control and domination of defendants Hartford and Owens over patents on glass-making machinery, and their licensing policy, and as a result of the license agreements hereinbefore referred to and the artificially high, uniform, and noncompetitive prices for various types of glass containers maintained throughout the United States, de- [fol. 76] fendants Hartford, Corning, Owens, Hazel-Atlas, Thatcher, Lynch, Ball Brothers, Anchor Hocking, and Liberty Glass have each made excessive profits.

189. In 1937 the gross sales of glass containers exceeded $160,000,000, and the gross sales of pressed and blown glassware exceeded $85,000,000.

190. Hartford, for many years, has had substantial earnings. In the year 1937, its total income was $3,605,446; its net income was $1,934,120, and the per cent of the net income to capital employed in operations equalled 67.77%.

191. Corning, for many years, has had substantial earnings. For the year 1937, its total sales amounted to $19,465,185; its net profit was $2,742,382; and the percentage of net profit to net worth equalled 17.0%.

192. Owens, for many years, has had substantial earnings. For the year 1937, its total sales were $91,252,793; its net profit $9,351,627; and the percentage of net profit to net worth equalled 14.6%.

193. Hazel-Atlas, for many years, has had substantial earnings. For the year 1937, its total sales were $32,693,196; its net profit was $2,898,000; and the percentage of net profit to net worth equalled 13.7%.

194. Thatcher, for many years, has had substantial earnings. For the year 1937, its total sales amounted to $5,637,906; its net profit was $1,022,360; and the percentage of net profit to net worth equalled 23.86%.

195. Lynch, for many years, has had substantial earnings. For the year 1937, its total sales amounted to $1,963,000; its net profit was $642,000; and the percentage of net profit to net worth equalled 36.96%.

[fol. 77] 196. Ball Brothers, for many years, has had substantial earnings. For the year 1937, its total sales amounted to $14,162,149 and its net profit was $2,147,513.

197. Anchor Hocking Corporation, for many years, has had substantial earnings. For the year 1937, its total sales amounted to $24,232,453 and its net profit was $1,151,781.

198. Liberty Glass, for many years, has had substantial earnings. For the year 1937 its total sales amounted to $1,256,486; its net profit was $46,128; and the percentage of net profit to net worth equalled 13.2%.

Restrictions on Machinery and Restrictions on Use and Production of Glass Containers

199. Neither Hartford nor Owens has ever sold any of their glass-container machines. Each of them has always leased their machinery under licensing agreements in con-

sideration of an initial license fee (covering the costs of manufacturing the machinery) and royalties on production.

Restrictions on Machines

200. The policy of defendants Hartford and Owns with regard to the distribution of glassware machinery made under their patents has been formulated and carried out with a view to furthering the conspiracy, monopoly, and combination in restraint of trade hereinbefore alleged.

201. Hartford and Owens have discouraged improvement and development of glass machinery by their licensees by providing in their license agreements that improve-
[fol. 78] ments on licensed machinery made by the licensee shall become the property of the licensor without any compensation to the licensee.

202. Hartford and Owens have required their licensees to agree not to contest the validity of the patents under which they are licensed, including all patents issued subsequent to the date of the license.

203. Hartford has included in its license agreements provisions limiting the use of Hartford feeders to use in connection with Hartford forming machines and limiting the use of Hartford lehrs to use in connection with other Hartford machines.

204. Frequently, Hartford has limited the number of feeding machines that may be used by the licensees. By restricting the number of feeding machines to a licensee, Hartford has prevented and is now preventing certain of its licensees from expanding their businesses into various parts of the United States with the result that Hartford has favored and is favoring others of its licensees and has restricted and stifled, and is now restricting and stifling, competition in the glass-container industry in the United States.

Restrictions on Use and Production of Glass Containers

205. The policy of defendants Hartford and Owens, with regard to the manufacture and distribution of glass products manufactured on machinery licensed by Hartford or Owens, has been formulated and carried out with

a view to furthering the conspiracy, monopoly, and combination in restraint of trade hereinbefore alleged.

206. Hartford and Owens, through their agreements (between themselves and with their licensees), regulate [fol. 79] the manufacture and distribution by their licensees of glass products which are not themselves the subject of the patents covered by the license agreements.

207. No licensee of Hartford can produce all types of glassware on machines licensed from Hartford. No licensee of Hartford other than Owens is unrestricted as to the type and amount of glass containers it may produce on machines licensed by Hartford. Owens, however (as well as Hazel-Atlas), is limited by the agreement of 1933 in the production of fruit jars as set forth in paragraph 156. Moreover, Owens and every other licensee of Hartford (except defendant Corning) are not permitted to use the machinery licensed from Hartford for bulb and heat-resisting ware, and other types of pressed and blown glassware.

208. In several instances Hartford has given an exclusive license to use its machinery in connection with the manufacture of specified products. For example, by an agreement dated April 9, 1932, American Thermos Bottle Company is granted an exclusive license to make certain types of vacuum-thermos bottles on Hartford machines; and by another agreement Akro-Agate Glass Company is given an exclusive license to manufacture toy marbles and similar products on such machinery.

209. Owens has not granted a new license since 1918, and has never granted an unrestricted license.

210. Hartford has restricted competition by inserting in its license agreements clauses restricting (1) the type or kind of glassware which can be produced; (2) the use of the product manufactured; (3) the character of the glassware as to (a) weight, (b) color, (c) capacity and (d) composition; (4) the quantity which can be produced; and [fol. 80] (5) the market in which the licensee may distribute its products, including (a) customer or class of customers to whom the products may be sold, and (b) the territory within which the licensee may distribute its product.

211. *Limitation of type or kind of glassware that may be produced.*—Except for Owens and Hartford-Atlas, every licensee of Hartford is limited as to the type or kind of glassware that may be manufactured by it under the Hartford license agreements. In other words, each licensee is authorized to use the machinery in the production of certain types or kinds of glass containers, and is specifically excluded from using such machinery for other types and kinds of glassware, such as bulbs, heat-resisting ware, and other types of pressed and blown ware.

212. *Examples of limited use of the product manufactured.*—Buck Glass Company, by its license agreement, dated January 11, 1926 (as amended January 12, 1932, and June 12, 1933), may manufacture wine bottles to be used only for sacramental purposes.

Liberty Glass Company, by its license agreement of May 25, 1926 (amended November 25, 1931, and May 22, 1933; renewed May 28, 1934), may manufacture tumblers for drinking purposes only.

Gayner Glass Works, by its license agreement of December 31, 1935, is restricted in the manufacture of narrow-neck bottles, jugs, and demijohns, to such bottles, jugs, and demijohns as are used for vinegar, ciders, syrups, bleaching fluids, hair tonics, barber supplies, and fluid extracts.

[fol. 81] Florida Glass Manufacturing Company by its license agreement of August 2, 1935, is restricted in the manufacture of glass containers for foods to such glass containers as are to contain (a) mayonnaise, (b) peanut butter, (c) honey, (d) preserves, and (e) syrups.

Bartlett-Collins Glass Company, by its license agreement of March 6, 1937, is restricted in the manufacture of a special type of candy jar.

Brockway Machine Bottle Company, by its license agreement of January 23, 1933 (amended September 12, 1933, and December 26, 1934), is restricted in the manufacture of miscellaneous bottles and jars to such bottles and jars as are used only for (a) cleaning fluid, (b) polishes for furniture, shoes, and metals, (c) insecticides, (d) paints, stains, shellacs, and varnishes, (e) ammonia and bluing, (f) inks, mucilages, and pastes, and (g) vaselines.

Indiana Glass Company, by its license agreement dated October 6, 1927 (as amended July 14, 1931, and November

4, 1935), is restricted to the manufacture of gascolator cups used in feed lines.

213. *Examples of restrictions as to character of glass containers*—(a) *Weight.*—Glenshaw Glass Company, Maryland Glass Corporation (by its license agreement of April 15, 1928, renewed March 30, 1933), and Salem Glass Works (by its license agreement of January 27, 1937) are not permitted to manufacture containers exceeding 72 oz. in weight.

Hocking Glass Company, by its license agreement of December 7, 1935, is not permitted to manufacture a container exceeding 82 oz. in weight.

[fol. 82] Capstan Glass Company, by its license agreement of February 17, 1926 (as amended October 12, 1923), is not permitted to manufacture a container exceeding 100 oz. in weight.

(b) *Color.*—Maywood Glass Company (by its license agreement of December 16, 1932, is permitted to manufacture beer bottles of flint and amber glass only.

Maryland Glass Company, by its license agreement dated March 30, 1933 (amended October 10, 1936, and November 25, 1936), is permitted to manufacture the following articles only in blue glass: bases for ink bottles, vases, jars for toilet and proprietary medicinal preparations. It was also authorized to manufacture 2,000 light green glass bells during the year 1935.

Latchford Glass Company, by its license agreement of December 7, 1932 (amended November 8, 1935, and May 7, 1936), is permitted to manufacture only flint and amber pressure ware.

Knox Glass Bottle Company, by its license agreement of August 25, 1932, is permitted to manufacture only amber bottles for ginger beer to be sold to a particular customer.

Glenshaw Glass Company, by its license agreement dated April 13, 1928 (amended April 7, 1933), is permitted to manufacture a maximum amount per year of prescription ware made only in emerald-green glass.

Carr-Lowrey Glass Company, by its license agreement of October 30, 1924 (amended May 20, 1930, renewed October 30, 1932, and November 10, 1936), is permitted to manufacture ash trays and coasters in opal only.

[fol. 83] (c) *Capacity.*—Northwestern Glass Company, by its license agreement of August 1, 1933, is permitted to manufacture spring water bottles not exceeding one quart in capacity.

Laurens Glass Works, Inc., by its license agreement of June 9, 1924 (amended November 24, 1924, and August 22, 1929; renewed June 9, 1932), is permitted to manufacture glass flasks for castor oil and turpentine not exceeding 4 oz. in capacity.

Brockway Machine Bottle Company is permitted to manufacture individual creamers not to exceed 2 oz. in capacity and they are not to be used by dairies.

Gayner Glass Works is permitted to manufacture soft-drink bottles and jugs for extracts and for wines having a capacity of one-half of one gallon.

Buck Glass Company is authorized to manufacture jugs having a capacity of one-half of one gallon.

Sterling Glass Company, by its license agreement of July 7, 1933, is authorized to manufacture certain types of bottles of specified capacity.

Hart Glass Manufacturing Company, by its license agreement of December 22, 1925, is authorized to manufacture water bottles of the capacity of 32 oz.

(d) *Composition.*—Fairmount Glass Works, Inc., by its license agreement of April 30, 1934, is restricted to the manufacture of certain types of spectacles, cameras, etc., made from quartz or crown flint glass.

214. *Examples of Restrictions on Maximum Production.*—Sterling Glass Company is limited in the manufacture of beer bottles to 30,000 gross per annum, and of food condiment bottles to 10,000 gross per annum.

[fol. 84] Chattanooga Bottle and Glass Manufacturing Company, by its license agreement of August 21, 1923 (renewed August 21, 1931), is limited in manufacture of liquor and wine bottles to 30,000 gross per annum; of special wine bottles to 4,000 gross per annum; of vinegar and cider bottles to 10,000 gross per annum; of specified condiment and salad jars to 60,000 gross per annum; and of lubricating oil bottles to 5,000 gross per annum.

Capstan Glass Company is limited in the manufacture of liquor bottles, flasks, and wine bottles to 150,000 gross per annum.

Maywood Glass Company is limited in the manufacture of wine bottles to 15,000 gross per annum; of colored beer bottles to 5,000 gross per annum; of syrup jugs to 5,000 gross per annum; of round gallon jugs to 2,000 gross per annum; of round ½ gallon jugs to 1,500 gross per annum; and of special fruit preserve jars to 20,000 gross per annum.

Tygart Valley Glass Company, by its license agreement of February 18, 1936, is limited in the manufacture of beer, liquor, and wine bottles to 60,000 gross per annum; and of proprietary medicinal ware to 50,000 gross per annum.

Swindell Brothers, by its license agreement of July 28, 1927 (renewed July 29, 1935), is limited in the manufacture of special beer, soda, and similar type bottles to 60,000 gross per annum.

Diamond Glass Company, by its license agreement of March 27, 1923, is limited in the manufacture of liquor ware [fol. 85] (not including wine bottles) to 25,000 gross per annum; of pickle, relish, etc., ware to 35,000 gross per annum; and of lotion, nail polish, etc., ware to 15,000 gross per annum.

Foster-Forbes Glass Company, by its license agreement of June 4, 1925 (amended November 25, 1931, and renewed June 4, 1933), is limited in the manufacture of malt beverage bottles to 50,000 gross per annum; of nursing bottles to 2,000 gross per year; and of food condiment bottles to 25,000 gross per annum.

Carr-Lowery Glass Company is limited in the manufacture of pressure ware, including beer bottles, to 15,000 gross per annum; of narrow neck liquor bottles to 15,000 gross per annum; and of nursing bottles to 15,000 gross per annum.

Buck Glass Company is limited in the manufacture of narrow neck liquor bottles to 70,000 gross per annum; and of food condiment bottles to 25,000 gross per annum.

Florida Glass Manufacturing Company is limited in the manufacture of bottles for pressure ware to 7,000 gross per annum.

Gayner Glass Works is limited in the manufacture of wide mouth food containers to 15,000 gross per annum.

Brockway Machine Bottle Company is limited in the manufacture of wide mouth food containers to 250,000 gross per annum.

Bartlett Collins Glass Company is limited in the manufacture of blown drinking tumblers to 85,000 gross per an-

num; of pressed drinking tumblers to 100,000 gross per annum; and of lantern globes to 3,000 gross per annum.

[fol. 86] Laurens Glass Company is limited in the manufacture of vinegar, cider, and syrup bottles to 10,000 gross per annum; and of panel bottles, not exceeding a specified weight and to be sold chiefly to specified customers, to 4,000 gross per annum.

Salem Glass Works, by its license agreement of January 25, 1937, is limited in the manufacture of candy jars to 50,000 gross per annum.

Maryland Glass Company is limited in the manufacture of jars specified for a proprietary medicine to 2,000 gross per annum; of jars for another proprietary to 1,000 gross per annum; and of light green glass bells for the year 1935 to 2,000 gross per annum.

Glenshaw Glass Company is limited in the manufacture of emerald glass prescription ware to 50,000 gross per annum.

Macbeth Evans Glass Company is limited in the manufacture of hot mold tumblers to 150,000 gross per annum.

Indiana Glass Company is limited in the manufacture of certain type tumblers and stem ware to 5,000 gross each per annum.

215. *Examples of restrictions on minimum production.*—Liberty Glass Company was required to produce 10,000 gross bottles for vinegar, etc., and if it failed to do so the right to manufacture vinegar bottles would terminate. On November 25, 1931, Hartford, because of the failure of Liberty Glass to produce its required quota of this type of bottles, terminated Liberty Glass' right to produce vinegar bottles.

Pierce Glass Company is required, under its agreement of July 2, 1923 (renewed July 14, 1937), to produce 25,000 [fol. 87] gross of liquor ware in any one calendar year.

McKee Glass Company is required by its license agreement of July 18, 1928 (renewed July 14, 1936), to produce a minimum aggregate of 1,000,000 headlight lenses in every two-year period beginning with January 1, 1929, otherwise the agreement terminates automatically.

216. *Examples of restrictions as to market in which the licensee may distribute its product*—(a) *Customers to whom the products may be sold.*—Knox Glass Bottle Company

may make amber bottles for ginger beer only for a specified company.

Gayner Glass Works may manufacture a specified type of drinking bottle for a specified customer and a specified condiment bottle for a specified customer.

Latchford Glass Company is authorized to make alcohol-rub bottles for a specified customer.

Maryland Glass Company is authorized to make a particular type of jar, a particular type of jug, a particular type of water bottle, and a particular type of measuring glass, in each instance for a specified customer.

Laurens Glass Works is authorized to make a panel bottle to be sold to two specified customers.

Olean Glass Company is authorized to make a ketchup bottle for a specified customer.

Maywood Glass Company is authorized to manufacture a bleach bottle only for a specified customer.

Chattanooga Bottle and Glass Manufacturing Company is authorized to manufacture bottles for two specified customers.

[fol. 88] (b) *Territorial limitations.*—Northwestern Glass Company, by its license agreement of August 1, 1933, is prohibited from shipping ware manufactured by it on the Hartford feeders to any place outside of the States of Washington, Oregon, Idaho, and Montana, and the Territory of Alaska.

Owens-Illinois Pacific Company's license agreement dated October 18, 1930 has a provision therein by which Hartford agrees not to supply machines to any other company for the manufacture of hollow glassware in that part of the United States west of the Rocky Mountains.

Refusals to License

217. Because any persons desiring to engage in the glassware industry would be placed at the mercy of a single powerful patent-holding corporation, and because of the great hazard necessarily involved in venturing into a business so completely monopolized and dominated by defendants Hartford, Corning, Owens, Hazel-Atlas, Thatcher, Anchor Hocking, and Ball Brothers, such monopolistic control and domination has had and will continue to have the direct and immediate effect of suppressing and preventing substantial competition which would otherwise arise in the

production and sale in interstate commerce of glassware machinery and glassware products manufactured therefrom.

218. Hartford has refused to license potential producers of glassware seeking to enter the industry, telling the applicant that the glass-container industry already had adequate production capacity. The following instances are in addition to those set forth in paragraph 141 hereof, [fol. 89] where Hartford is alleged to have refused to issue licenses for the manufacture of milk bottles, and to paragraph 161 hereof, where Hartford is alleged to have refused to issue licenses to manufacture fruit jars:

In February 1925 Hartford refused a license to Universal Glass Products Company to manufacture opal ware.

In July 1925 Hartford refused a license to North Baltimore Glass Company to manufacture pressure ware.

In October 1925 Hartford discouraged Wormser Glass Company from going into the business of manufacturing beer bottles.

In October 1930 Hartford discouraged Beiswanger Sales Company from going into the business of producing a general line of glassware.

In April 1931 Hartford discouraged C. W. Crowell, who was interested in operating the old Southern Glass Company on the West Coast.

In June 1931 Hartford refused a license to Charles O. Kiefer, who applied for a license to manufacture tumblers.

In June 1933 Hartford refused a license to Messrs. Pinnell and Meservey to manufacture milk bottles and beer bottles.

In August 1933 Hartford refused a license to Puritan Glass Company.

In December 1932 Hartford refused a license to W. R. Ludlum, who wanted to manufacture beer bottles.

In November 1933 Hartford refused a license to Aub & [fol. 90] Company, which was interested in the manufacture of liquor and pharmaceutical ware.

In November 1933 the National Glass Company syndicate of St. Paul, Minnesota, unsuccessfully sought a license from Hartford.

At various times in 1933 Connelly Glass Company sought a license to manufacture a general line of glassware but

Hartford discouraged any effort on the part of this company to enter the glassware business.

In January 1934 Hartford discouraged Debois Glass Company, which was interested in acquiring a license to manufacture glassware.

In July 1934 Hartford discouraged J. V. Keys, who was interested in going into the glassware business.

In December 1934 Hartford refused the application of Glendale Glass Company for a license to reopen an old plant and manufacture glassware.

In January 1935 Hartford refused to license the Western Glass Products Company and Midway Glass Company.

In 1935 and 1936 Michigan Bottle Company made unsuccessful efforts to obtain a license from Hartford.

In September 1937 Hartford refused a license to Mantle Lamp Company which intended to manufacture glassware.

Extent of Monopoly

219. *Glass machinery patents.*—The defendants Hartford and Owens now own over 1,500 patents on glass-making machinery. They control and dominate virtually all patents on such machinery. 96.6% of all glass containers produced and distributed in the United States are made [fol. 91] on machines owned or licensed by Hartford and Owens. Hartford licenses 67.4% and Owens owns or licenses 29.2% of such machinery. 3.4% of the glass containers produced and distributed in the United States are made by three independents; 2.02% by the Obear Nester Glass Company, and 1.4% by F. E. Reed Glass Company and Alexander H. Kerr & Co., combined.

225. *Glass machinery.*—Substantially all the glass-container machinery manufactured and distributed in the United States is manufactured for defendants Hartford and Owens.

226. *Heat-resisting ware.*—Corning has a virtual monopoly and dominating position in the United States of the manufacture and distribution of heat-resisting ware, producing approximately 95% of the heat-resisting ware in the United States. Its only competitors are McKee Glass Company and Dunbar Glass Company.

227. *Glass containers.*—Owens, Hazel-Atlas, Anchor Hocking, Thatcher, and Ball Brothers manufacture and

distribute 69.55% of all glass containers (including milk bottles and fruit jars) produced in the United States. Owens manufactures 38.03%; Hazel-Atlas, 16.89%; Anchor Hocking, 8.01%; Thatcher, 2.87%; and Ball Brothers, 3.75%. Thirty-six other companies manufacture and distribute the other 30.45% of glass containers; not one of these companies manufactures more than 2.02%. Of these 36 companies, all but three are Hartford or Owens licensees, and these three, as hereinbefore alleged, only produce and distribute 3.4%. Two of them are being sued for patent infringement by Hartford.

[fol. 92] 228. *Milk bottles.*—Owens, Thatcher, and Liberty Glass manufacture and distribute 77.82% of all the milk bottles produced in the United States; Thatcher's share is 36.57%; Owens manufactures 35.08%; and Liberty Glass, 6.17%. Seven other companies manufacture 22.18% of the milk bottles; all but one of these companies are Hartford licensees.

229. *Fruit jars.*—Owens, Ball Brothers, and Hazel-Atlas manufacture and distribute 84.59% of all fruit jars produced in the United States; Ball manufactures 56.73%; Hazel-Atlas, 20.13%; and Owens, 7.73%. The balance, 15.41%, is manufactured by one company, Alexander H. Kerr and Company. This concern is now being sued by Hartford for alleged infringement.

Conclusion

230. By establishing and maintaining the conspiracy, monopoly, and combination in restraint of trade and by the various acts hereinbefore alleged, the defendants herein (i) have obtained and now hold a monopoly of patents in the United States covering automatic glass-making machinery; (ii) have unreasonably restricted and restrained the production and distribution of such machinery for the production of heat-resisting ware, and glass containers generally (and particularly milk bottles and fruit jars) and have eliminated competition in connection therewith; (iii) have established and maintained a monopoly and unreasonably restrained the production and distribution of heat-resisting ware, and glass containers generally (and particularly milk bottles and fruit jars) and have eliminated competition in connection therewith; (iv) have re-

[fol. 93] stricted the production of glass-making machinery, heat-resisting ware, and glass containers generally (and particularly milk bottles and fruit jars) and have eliminated competition in connection therewith; (v) have fixed and maintained arbitrary, artificial, noncompetitive, and rigid prices for heat-resisting ware, and glass containers generally (and particularly milk bottles and fruit jars); (vi) have denied to citizens of the United States the opportunity to engage in the business of producing automatic glass-making machinery, and of producing and distributing heat-resisting ware and glass containers generally (and particularly milk bottles and fruit jars) and have eliminated competition in connection therewith; (vii) have discouraged and impeded the progress of science and the useful arts, and have used the patent laws of the United States for purposes inconsistent with the constitutional basis of those laws; and (viii) have monopolized trade and commerce among the several states and have unreasonably restrained such commerce in violation of the laws of the United States.

Prayer

Wherefore, plaintiff prays:

(1) That the aforesaid monopolies, attempts to monopolize, combinations and conspiracies to monopolize, and contracts, combinations, and conspiracies in restraint of trade be adjudged and decreed to be unlawful, and that the agreements, understandings, acquisitions, purchases, and practices alleged in this complaint be adjudged and decreed to be in violation of the Sherman Antitrust Act and the Clayton Act.

[fol. 94] (2) That the Court adjudge and decree that the defendants have monopolized, attempted to monopolize, combined and conspired to monopolize, and contracted, combined, and conspired to restrain trade in violation of Sections 1 and 2 of the Sherman Antitrust Act.

(3) That the Court adjudge and decree that the defendants Hartford-Empire Company, Corning Glass Works, Houghton Associates, Inc., Empire Machine Company, Owens-Illinois Glass Company, Hazel-Atlas Glass Company, and Lynch Corporation have monopolized, attempted to monopolize, combined and conspired to monopolize, and

contracted, combined, and conspired to restrain trade in violation of Sections 1 and 2 of the Sherman Antitrust Act with respect to patents for the manufacture of glassware and with respect to machinery for the manufacture of glassware.

(4) That the Court adjudge and decree that the defendants Corning Glass Works, Hartford-Empire Company, Houghton Associates, Inc., and Empire Machine Company have monopolized, attempted to monopolize, combined and conspired to monopolize, and contracted, combined, and conspired to restrain trade in violation of Sections 1 and 2 of the Sherman Antitrust Act with respect to patents for the manufacture of heat-resisting ware and with respect to the manufacture of heat-resisting ware.

(5) That the Court adjudge and decree that the defendants Hartford-Empire Company, Owens-Illinois Glass Company, Hazel-Atlas Glass Company, Anchor Hocking Glass Corporation, Thatcher Manufacturing Company, and Ball [fol. 95] Brothers Company have monopolized, attempted to monopolize, combined and conspired to monopolize, and contracted, combined, and conspired to restrain trade in violation of Sections 1 and 2 of the Sherman Antitrust Act with respect to the manufacture of glass containers.

(6) That the court adjudge and decree that the defendants Hartford-Empire Company, Owens-Illinois Glass Company, Thatcher Manufacturing Company, and Liberty Glass Company have monopolized, attempted to monopolize, combined and conspired to monopolize, and contracted, combined, and conspired to restrain trade in violation of Sections 1 and 2 of the Sherman Antitrust Act with respect to the manufacture of glass milk bottles.

(7) That the Court adjudge and decree that the defendants Hartford-Empire Company, Owens-Illinois Glass Company, Hazel-Atlas Glass Company, and Ball Brothers Company have monopolized, attempted to monopolize, combined and conspired to monopolize, and contracted, combined, and conspired to restrain trade in violation of Sections 1 and 2 of the Sherman Antitrust Act with respect to the manufacture of glass fruit jars.

(8) That the defendants, and each of them, and their officers, directors, agents, representatives, and all persons

and corporations acting and claiming to act on behalf of them, be perpetually enjoined from monopolizing, attempting to monopolize, combining and conspiring to monopolize, or agreeing, combining, or conspiring to restrain trade, and be perpetually enjoined from engaging in or participating [fol. 96] in practices, contracts, relationships, or understandings, or claiming any rights thereunder, having a tendency to continue or revive any of the aforesaid violations of the Sherman Antitrust Act and the Clayton Act.

(9) That the defendant Hartford-Empire Company be dissolved and that its patents and other properties be rearranged under several separate and independent corporations, independently owned, in such a way as will terminate effectively the aforesaid monopoly or monopolies and prevent further violations of the Sherman Antitrust Act.

(10) That the defendant Hartford-Empire Company and its stockholders be required to make such divestitures and conveyances of their stock holdings and properties as shall be necessary to accomplish such dissolution.

(11) That the Court appoint such receivers or trustees as may be necessary or appropriate to effectuate a dissolution of the defendant Hartford-Empire Company and the aforesaid monopoly or monopolies.

(12) That each of the agreements between Hartford-Empire Company and Corning Glass Works, between Hartford-Empire Company and Owens Illinois Glass Company, between Hartford-Empire Company and Hazel-Atlas Glass Company, between Hartford-Empire Company and Thatcher Manufacturing Company, between Hartford-Empire Company and Anchor Hocking Glass Corporation, between Hartford-Empire Company and Lynch Corporation, between Hartford-Empire Company and Ball Brothers Company, between Hartford-Empire Company and Liberty [fol. 97] Glass Company, and between Hartford-Empire Company and Corning Glass Works and Empire Machine Company, and any other agreements between and among the corporate defendants, or any of them, be each adjudged to represent an illegal combination and conspiracy to restrain and monopolize trade and commerce, and that the observance of each of such agreements in any respect and the execution of similar agreements be perpetually enjoined.

(13) That the Court order and direct the defendant Empire Machine Company to divest itself of its stock ownership in the defendant Hartford-Empire Company in order to establish an effectual guarantee against further oppression of competition and attempts to monopolize by said two corporate defendants.

(14) That the granting of exclusive licenses by Hartford-Empire Company and Owens-Illinois Glass Company, and the imposition by them, or each of them, of restrictions upon the use of their licensed machinery under their license agreements, be adjudged and decreed illegal as constituting the exercise of illegal monopolistic control to restrain competition in the production and sale of glassware, including glass containers, and that such disposition or revision be made of the license agreements of Hartford-Empire Company and Owens-Illinois Glass Company as will permit and effect competition in the production and sale of such containers.

(15) That the "tying clauses" contained in Hartford-Empire Company, Lynch Corporation, and Owens-Illinois [fol. 98] Glass Company agreements for the licensing of glass-manufacturing machinery be adjudged and decreed to violate Section 3 of the Clayton Act, and the use by each such defendants, and their successors, of such "tying clauses," or similar clauses, be perpetually enjoined.

(16) That the defendant Empire Machine Company, the stockholders of the Empire Machine Company, the defendant Corning Glass Works, and the stockholders of the Corning Glass Works be perpetually enjoined from holding or controlling, directly or indirectly, or through subsidiary corporations, agents, representatives, or assignees, any of the capital stock of the Hartford-Empire Company, or of any successor or successors of the Hartford-Empire Company, under a decree of dissolution of this Court.

(17) That in order to effect competition in the glass container industry each individual defendant herein be perpetually enjoined from simultaneously holding or controlling, directly or indirectly, or through subsidiary corporations, agents, representatives, or assignees, any of the capital stock of more than one of the corporate defendants herein, and that each corporate defendant herein be perpetually enjoined from holding, directly or indirectly, any of the capital stock of any other corporate defendant herein

or of any competitor, or of any successor or successors of such corporate defendant or such competitor.

(18) That plaintiff have such other further general and different relief as the nature of the case may require and the Court may deem proper in the premises.

(19) That plaintiff recover the costs of this suit.

[fol. 99] (20) That pursuant to Section 5 of the Sherman Antitrust Act and Section 15 of the Clayton Act, writs of subpoena issue directed to such of the defendants as are not otherwise subject to service within the District, commanding them and each of them to appear herein and to answer under oath each allegation contained in this complaint and to abide by and perform such acts, orders, and decrees as the Court may make in the premises.

United States of America, Emerich B. Freed, United States Attorney for the Northern District of Ohio. Frank Murphy, Attorney General of the United States; Thurman Arnold, Assistant Attorney General; Samuel S. Isseks, Ernest S. Meyers, Special Assistants to the Attorney General; John W. Porter, Special Attorney.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Samuel S. Isseks, being duly sworn, says:

I am a Special Assistant to the Attorney General, and as such have been actively engaged in the conduct of this case and the preparation of this complaint on behalf of the Government. I have read the foregoing complaint and know the contents thereof, and I am informed and believe that the allegations therein contained are true.

[fol. 100] The sources of my information and the grounds of my belief are statements and correspondence of the defendants and others; the statements and official reports of Government investigators; and other records, reports, and information relating to the glass industry in the possession of the Department of Justice.

(Signed) Samuel S. Isseks.

Sworn to and subscribed before me this 7th day of December 1939. (Signed) Dorothy J. Heale, Notary Public. (Seal.)

[fol. 101] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO MAKE COMPLAINT MORE DEFINITE AND FOR A BILL OF PARTICULARS—Filed January 30, 1940

Now come the defendants, Ball Brothers Company, Frank C. Ball, George A. Ball, E. Arthur Ball, W. H. Ball, Edmund F. Ball, A. M. Bracken and Fred J. Petty, by their attorneys, and move the court for an order requiring plaintiff to furnish a more definite statement and a bill of particulars as to the following matters which are not averred with sufficient definiteness or particularity in the complaint to enable them properly to prepare their responsive pleading.

1. As to paragraph 34 of the complaint, state

(a) what act or activity is claimed by the term "maintaining monopolies of patents" and

(b) state which, if any, of the above-named defendants is charged with such act or activity.

2. As to paragraph 35 of the complaint, if the allegations or any of them there set forth, claim or charge activity or conduct on the part of the above-named defendants, or any of them, as to matters other than those alleged in paragraphs of the complaint which specifically designate Ball Brothers Company, state the particular act, activity or conduct constituting the basis for the allegations of paragraph 35, which of the above-named defendants is involved thereby and the time of the performance thereof.

3. As to paragraph 36 of the complaint, state whether or not plaintiff claims

[fol. 102] (a) that the above named defendants or any of them "joined the conspiracy referred to in paragraph 35" or

(b) joined other unlawful conspiracies incidental to or part of such "principal conspiracy"; and

(c) if so, state the particular act or activity relied upon; which of the above-named defendants is involved thereby, and the time of the performance thereof.

4. As to paragraph 37 of the complaint, if the allegations or any of them there set forth involve any act, activity or conduct of the aforesaid defendants or any of them not specifically alleged in subsequent portions of the complaint, then designate which of said defendants is involved and what act, activity, or conduct is relied upon in connection with the allegations as to—

(a) patents on automatic machinery for the production of pressed and blown glassware;

(a_1) patents on automatic machinery for the production of glass containers;

(b) machinery for the production of pressed and blown glassware;

(b_1) machinery for the production of glass containers;

(c) the manufacture or distribution of pressed and blown glassware and particularly heat resisting glassware;

(d) the manufacture and distribution of all kinds of glass containers;

(e) the manufacture and distribution of milk bottles;

(f) the manufacture and distribution of fruit jars.

5. As to paragraph 38 of the complaint, if the allegations or any of them there set forth claim or charge activity or conduct of the above-named defendants or any of them as to matters other than those alleged in subsequent paragraphs of the complaint which specifically designate Ball Brothers Company, then state the particular act or activity relied upon by the plaintiff as constituting an unlawful act contributing to restraint of trade, etc., which of the above-named defendants committed the same and the time of the commission thereof.

[fol. 103] 6. As to paragraph 143 of the complaint, state the act or acts of Ball Brothers Company which the plaintiff relies upon in charging that Ball Brothers joined "the combination and conspiracy" and if the allegations of said paragraph 143 otherwise bear on or involve acts or activity of Ball Brothers Company not alleged in subsequent paragraphs of the complaint, then designate such acts or activity and the time of the occurrence thereof.

7. As to paragraph 151 of the complaint, state the specific act or acts of Ball Brothers Company which the plaintiff charges by the statement, "Hartford and Ball Brothers in March 1933, coerced and induced the Knox group to enter into two agreements."

And for such further relief as to this honorable court may seem just.

The defects complained of in the complaint are its ambiguity and its failure to apprise the defendants and each of them of the charges, as to which particulars are sought, with sufficient definiteness and particularity to enable them to properly prepare a responsive pleading and properly prepare for trial.

A further statement of the defects complained of and the reasons why the particulars requested should be ordered is contained in the memorandum in support of this motion, which is attached hereto.

(S.) E. W. McCallister, E. W. McCallister, Esq., Everett Warner, Esq., (S.) Wilber Owen, Wilbur Owen, Esq., Nicholas Building, Toledo, Ohio. Solicitors for Ball Brothers Company, Frank C. Ball, George A. Ball, E. Arthur Ball, W. H. Ball, Edmund F. Ball, A. M. Bracken and Fred J. Petty.

January 29, 1940.

[fol. 104] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR A MORE DEFINITE STATEMENT AND A BILL OF PARTICULARS—Filed February 1, 1940

Now come the defendants Hartford-Empire Company, F. Goodwin Smith, Bartlett Arkell, Robson D. Brown, John C. Hostetter, Roger M. Eldred, Karl E. Peiler, Arthur T. Safford, Jr., Theodore L. Champeau and A. M. Pease, by their attorney, and move this Court for an order directing plaintiff to serve and file a more definite statement and a Bill of Particulars with respect to certain matters set forth in the Complaint herein, as follows:

1. As to Paragraph 33 (b) of the Complaint, specify:

(a) Whether it is claimed that defendants Hartford and Owens by means of any agreement or contract now in force "at the present time control and dominate all competing patents and processes relating to gob feeding in the manufacture of glassware."

(b) If the answer to (a) is in the affirmative, specify the date of any such agreement or contract, whether oral or written, and the parties thereto, and if oral, state the substance thereof.

(c) The Paragraphs of the Complaint to which the words "in the manner hereinafter alleged" refer in respect to:

(1) The "forming and carrying out the combination and conspiracy."

(2) The "restraining trade and commerce."

2. As to Paragraph 33(c) of the Complaint:

(a) State whether it is claimed that defendants Hartford and Lynch by means of any agreement or contract now in force "at the present time control and dominate the manufacture of forming machines."

(b) If the answer to (a) is in the affirmative, specify the date of any such agreement or contract, whether oral or written, and the parties thereto, and if oral, state the substance thereof.

(c) State the Paragraphs of the Complaint to which the [fol. 105] words "in the manner hereinafter alleged" refer in respect to:

(1) The "forming and carrying out the combination and conspiracy."

(2) The "restraining trade and commerce."

3. As to Paragraph 33(d) of the Complaint, specify:

(a) Whether it is claimed that defendant Hartford "at the present time controls and dominates the manufacture of lehr equipment" as alleged therein by means of any agreement or contract now in force.

(b) If the answer to (a) is in the affirmative, specify the date of any such agreement or contract, whether oral or

written, and the parties thereto, and if oral, state the substance thereof.

(c) The Paragraphs of the Complaint to which the words "in the manner hereinafter alleged" refer in respect to:

(1) The "forming and carrying out the combination and conspiracy."

(2) The "restraining trade and commerce."

4. As to Paragraph 34 of the Complaint, specify:

(a) Which, if any, of the "contracts, combinations and conspiracies to restrain interstate trade and commerce in glass-making machinery and glass products manufactured thereby," to which the defendant Hartford is alleged in the subsequent Paragraphs of the Complaint to have been or to be a party, plaintiff claims to be now in force; setting forth the names of the parties to such contracts, combinations and conspiracies, respectively, the dates thereof and the Paragraphs of the Complaint in which they are described.

(b) Which, if any, of the various acts and things alleged to have been done by these moving defendants, and each of them, plaintiff claims said defendants are now continuing to do.

5. As to Paragraph 35 of the Complaint, specify:

(a) Whether plaintiff claims that the alleged "conspiracy" was entered into on or about October 6, 1922, or whether plaintiff claims it was entered into prior thereto; and if prior thereto, state at what time, by what parties, and by what transaction or transactions plaintiff claims it was entered into.

(b) The names of the "others" alleged to have conspired with the defendants therein named "prior to or on or about October 6, 1922."

(c) Whether, when it is alleged that certain things were "also contemplated, as part of said conspiracy," plaintiff claims that an agreement was made or an understanding reached to do the things so alleged to be "also contemplated," and, if so, specify:

[fol. 106] (1) Whether plaintiff claims that such agreement or understanding was expressed orally or in writing

and state the date thereof and the parties thereto, and if oral, state the substance thereof.

(2) Whether plaintiff claims that any of the specific agreements or acts alleged in the subsequent Paragraphs of the Complaint were "contemplated," and if so, which; giving the Paragraph numbers of the Complaint where the same are referred to.

6. As to Paragraph 36 of the Complaint, specify: Which defendants plaintiff claims joined the "principal" "conspiracy referred to in Paragraph 35", and which defendants plaintiff claims "joined other unlawful conspiracies, monopolies or restraints of trade incidental to or part of such principal conspiracy," etc., as alleged in Paragraph 36; and specify what plaintiff claims such "other incidental" conspiracies, etc., were and where, when and by whom plaintiff claims they were entered into respectively.

7. As to Paragraph 72 of the Complaint, specify:

(a) What "conflicting patents" plaintiff claims were acquired, by whom and from whom and when.

(b) In What Paragraphs of this Complaint are specifically alleged the "other means" by which plaintiff claims Hartford and Owens carried out "a campaign" as alleged in Paragraph 72.

8. As to Paragraph 81 of the Complaint, specify separately who plaintiff claims were the "existing Nivison-Weiskopf licensees" who were "either eliminated from competition or became licensees of Hartford."

9. As to Paragraph 90 of the Complaint, identify the "miscellaneous acquisitions by purchase" referred to.

10. As to Paragraph 91 of the Complaint:

(a) As to sub-paragraph (a), specify the patents plaintiff claims "Hartford's inventors acquired," in what manner plaintiff claims such patents were acquired, and what "machines" are referred to.

(b) As to sub-paragraph (b), specify the "patents" "improvements," "machines" and "competitors" referred to therein.

(c) As to sub-paragraph (c), specify the particular interferences, the particular applications and the particular

"competitors and potential competitors" referred to therein, and in what manner and for what period respec-
[fol. 107] tively plaintiff claims that "Hartford caused the proceedings in the Patent Office to be delayed and protracted."

(d) As to sub-paragraph (d), specify the particular "interference" the particular "application by a Hartford inventor," the particular "competitors and potential competitors of Hartford," and the particular "inventions and devices" referred to therein and in what manner plaintiff claims Hartford "caused the determination of its inventor's priority and the issuance of the patent to be delayed and protracted"; also specify what kind of "litigation" and what "patent privilege" and what "longer period" are referred to therein.

(e) As to sub-paragraph (e), specify:

(1) What acts plaintiff claims were performed by Hartford in "protracting and delaying the issuance of patents on basic inventions."

(2) What "patents on basic inventions" are referred to.

(3) What "patents on improvements of machinery" plaintiff claims that "Hartford obtained," as alleged.

(4) By what acts plaintiff claims "Hartford delayed issuance of basic patents on the same machinery."

(5) As to what patent or patents plaintiff claims Hartford extended its patent protection.

11. As to Paragraph 122 of the Complaint, specify whether the acts and things plaintiff claims were done in furtherance of the "combination" and "conspiracy" alleged in Paragraph 122 of the Complaint are those specified in Paragraphs 123 to 125, inclusive, of said Complaint, and, if plaintiff claims there are other Paragraphs of the Complaint wherein such acts and things are alleged, give the numbers thereof.

12. As to Paragraphs 128 to 142 inclusive, of the Complaint, specify whether the acts plaintiff claims were done in furtherance of the alleged "conspiracy" referred to in Paragraph 128 of the Complaint as extended "to patents covering machinery for the manufacture of milk bottles,

the manufacture and distribution of such machinery, and the manufacture and distribution of milk bottles," and those through which it is alleged in Paragraph 142 of said [fol. 108] Complaint, Hartford "has aided and abetted and is aiding and abetting, such monopoly and restraint of trade and commerce," are the acts and things set forth in Paragraphs 129 to 141, inclusive; and if plaintiff claims there are other Paragraphs of the Complaint wherein such acts and things are alleged, give the numbers thereof.

13. As to Paragraphs 143 to 164, inclusive of the Complaint, specify:

(a) Whether the acts plaintiff claims were done in furtherance of the alleged "conspiracy" referred to in Paragraph 143 of the Complaint as extended "to patents covering machinery for the manufacture of fruit jars, the manufacture and distribution of such machinery, and the manufacture and distribution of fruit jars," and those through which it is alleged in Paragraph 164 of said Complaint, Hartford "has aided and abetted and is aiding and abetting such monopoly and restraint of trade and commerce," are the acts and things set forth in Paragraphs 144 to 163, inclusive; and if plaintiff claims there are other Paragraphs of the Complaint wherein such acts and things are alleged, give the numbers thereof.

(b) Whether plaintiff claims Hartford refused to renew the license held by Gayner Glass Works referred to in Paragraph 158.

14. As to Paragraphs 176 and 180, inclusive, of the Complaint, specify:

(a) Each instance in which plaintiff claims that Hartford alone, or in connection with Owens, has "stabilized prices," as alleged in Paragraph 176:

(1) By "requiring the leaders in the industry to establish and enforce uniform and non-competitive prices," naming such "leaders," the articles involved and the prices so established and enforced, and

(2) By "coercing price cutters to maintain said prices," naming such "price cutters," the articles involved and the prices so sought to be maintained.

(b) All acts and things plaintiff claims to have been done by each of these moving defendants in establishing, agree-

ing upon, maintaining and enforcing a "system of price leadership," as alleged in Paragraph 180.

[fol. 109] (c) All acts and things plaintiff claims to have been done by Hartford, and each instance, when Hartford "has used and is now using its power and domination"—

(1) "To enforce this system of price leadership," and

(2) To prevent sales of containers "at less than prices fixed for that type by the price leader," as alleged in Paragraph 180.

15. In respect to Paragraph 204 of the Complaint, specify which licensees of Hartford plaintiff claims were prevented or are now being prevented "from expanding their businesses into various parts of the United States" "by restricting the number of feeding machines" to such licensees, specifying separately each such alleged licensee and each license agreement alleged to prevent such alleged expansion.

16. As to Paragraphs 205 to 216, inclusive, of the Complaint, specify:

(a) Whether plaintiff claims the "policy" mentioned in Paragraph 205 was formulated and carried out by Hartford and Owens jointly and as a result of any agreement, contract or understanding, expressed in writing, and if so, state the date of such writing.

(b) Whether the agreements referred to in Paragraph 206 are those listed in Paragraphs 126, 127 and 212 to 216, inclusive; if there are other such agreements, specify the dates thereof and the parties thereto.

The defects in the Complaint complained of are the lack of details and the failure to set forth with sufficient definiteness or particularity the matters as to which particulars are requested, and the uncertainty as to exactly what plaintiff claims in the respects in which plaintiff is above asked to state its claims; it being necessary that these moving defendants be informed of such details, particulars and claims in order to properly prepare their answers and to prepare for trial.

There is annexed hereto a memorandum in support of this motion which sets forth why each of the particulars requested should be furnished and, in doing so, points out

[fol. 110] the defects complained of. That memorandum is made a part of this motion.

Dated, January 30, 1940.

(S.) E. J. Marshall, S. S. Wall, Attorneys for the Within Named Defendants, 1434 Nicholas Building, Toledo, Ohio.

Of Counsel:

Thomas G. Haight, 15 Exchange Place, Jersey City, N. J.
Edgar J. Goodrich, Investment Bldg., Washington, D. C.

[fol. 111] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR MORE DEFINITE STATEMENT AND A BILL OF PARTICULARS—Filed Feb. 1, 1940.

Now come the defendants, Owens-Illinois Glass Company, William E. Levis, F. J. Solon, E. F. Martin, F. T. Nesbitt, John H. McNerney, R. H. Barnard, C. B. Belknap, Harold Boeschenstein, W. H. Boshart, H. E. Collin (improperly impleaded as H. R. Collin), George P. Greenhalgh, Ben F. Hazelton, Jr., W. W. Knight, R. H. Levis, F. H. McAdoo, H. G. Phillipps (improperly impleaded as H. C. Phillipps), C. J. Root, F. W. Schwenck, and C. J. Wilcox by their attorneys, and represent to the court that certain matters hereinafter referred to are not averred in the complaint with sufficient definiteness or particularity to enable them properly to prepare responsive pleadings or to prepare for trial. Said defendants therefore move this court for an order directing the plaintiff to file and serve a more definite statement and a bill of particulars with respect to said matters, specifying:

1. With reference to Lines 9, 10 and 11 of Par. 33(b), what agreements or contracts are in force "at the present time" whereby the moving defendants or any of them "at the present time control and dominate all competing patents and processes relating to gob feeding in the manufacture of glassware," specifying the date of any such agreement,

whether it is a written agreement or an oral agreement; and, if it is an oral agreement, stating the parties to such oral agreement and the substance thereof; also the para-
[fol. 112] graphs of the complaint referred to in Lines 8 and 9 by use of the words "in the manner hereinafter alleged."

2. With reference to Lines 16, 17, 18 and 19 of Par. 34, specify and identify all contracts the defendant Owens now has in force that are alleged to be "contracts, combinations, and conspiracies to restrain interstate trade and commerce in glass-making machinery and glass products manufactured thereby," and state which of the various acts and things alleged to have been done by these moving defendants plaintiff claims said defendants are now continuing to do.

3. With reference to paragraph 36 of the complaint,

(a) State when and how these moving defendants respectively joined the conspiracy referred to in paragraph 35, if it is intended by the allegations of this paragraph to charge any of them with joining such conspiracy.

(b) Identify the paragraphs of the complaint wherein is alleged the joining by these moving defendants respectively of "other unlawful conspiracies, monopolies, or restraints of trade incidental to or part of such principal conspiracy, monopoly, and combination in restraint of trade."

(c) Specify what such "incidental" "other unlawful conspiracies, monopolies, or restraints of trade" are referred to and where, when, and by whom they were entered into, respectively.

4. With reference to paragraph 72 of the complaint, state what "conflicting patents" (Line 17) were acquired; and by whom, from whom, and when they were acquired; also in what paragraphs of this complaint are specifically alleged the "other means" by which Hartford and Owens carried out "a campaign" as alleged in paragraph 72. (Line 18.)

5. With reference to paragraph 81, name or identify the "existing Nivison-Weiskopf licensees" who were "either eliminated from competition or became licensees of Hartford."

6. As to paragraph 90.

(a) Specify and identify the "additional suits brought by Owens" referred to in lines 8 and 9.

[fol. 113] (b) Identify the "miscellaneous acquisitions" referred to in line 8, giving the names of the parties involved in each such transaction, the respective dates thereof, and a description of the property covered by each such transaction.

7. With reference to paragraph 122, state whether the acts plaintiff claims were done "for the purpose of securing, maintaining and extending the conspiracy, monopoly and combination," alleged in paragraph 122, are those set forth in paragraphs 123 to 125 inclusive; and, if there are other paragraphs of the complaint wherein such acts and things are alleged, or if plaintiff claims other acts on the part of these defendants under this paragraph, identify such other paragraphs, and such other acts.

8. With reference to paragraphs 128 to 142, inclusive, state whether the acts plaintiff claims were done "in order to carry out the conspiracy, monopoly and combination" and "to maintain, strengthen, and extend, * * *," etc., as "related to patents covering machinery for the manufacture of milk bottles, the manufacture and distribution of such machinery, and the manufacture and distribution of milk bottles," are the acts alleged in paragraphs 129 to 141, inclusive; and, if plaintiff claims there are other paragraphs of the complaint wherein such acts are alleged, identify such other paragraphs.

9. With reference to paragraphs 143 to 164, inclusive, state whether the acts plaintiff claims were done "in order to carry out the conspiracy, monopoly, and combination" and "to maintain, strengthen, and extend * * *," etc., as "related to patents covering machinery for the manufacture of fruit jars, the manufacture and distribution of such machinery, and the manufacture and distribution of fruit jars," are the acts set forth in paragraphs 144 to 163, inclusive; and, if plaintiff claims there are other paragraphs of the complaint wherein such acts are alleged, identify such other paragraphs.

10. With reference to paragraph 205, state whether it is claimed that the "policy" mentioned in paragraph 205

was formulated and carried out by Hartford and Owens jointly and as a result of any written agreement, and, if so, identify such agreement.

[fol. 114] 11. With reference to paragraph 206, state whether the agreements referred to therein are those listed in paragraphs 126, 127 and 212 to 216, inclusive; and, if there are other such agreements, name the parties thereto and give the dates of execution.

A memorandum in support of this motion is filed herewith.

Respectfully submitted,

(S.) Williams, Eversman & Morgan, Williams, Eversman & Morgan, Lloyd T. Williams, (S.) Lloyd T. Williams, Henry A. Middleton, (S.) Henry A. Middleton, 1600 Ohio Bldg., Toledo, Ohio, Attorneys for the Within Named Defendants.

Dated at Toledo, Ohio, February 1, 1940.

[fol. 115] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR A MORE DEFINITE STATEMENT AND A BILL OF PARTICULARS—Filed February 1, 1940

Now come the defendants Anchor Hocking Glass Corporation, Isaac J. Collins, J. D. Dilworth, W. V. Fisher, T. C. Fulton, Herman Krannert, V. E. Macy, Jr., J. K. Moffett, Ernest Stauffen, Jr., L. B. Williams, J. O. Deegan, B. E. Factor, C. D. King, H. J. Carr, H. C. Laughlin, H. J. Hamlin and F. B. Schlub, and each of them, and respectfully show to this Honorable Court:

That on account of the insufficiency of the facts set forth in connection with certain averments in the complaint herein, which averments are hereinafter more particularly referred to according to the paragraph and page of the complaint in which they appear, and because the matters

therein dealt with are not averred with sufficient definiteness and particularity, it is necessary, to enable said defendants or any of them properly to prepare their respective answers to said complaint and to prepare for trial, that there be furnished by plaintiff a more definite statement and a bill of particulars as to the nature and character of said claims of the plaintiff, further defining the issues as to the de-
[fol. 116] fendants aforesaid in the manner herein prayed for. The foregoing statement of the defects in the several allegations is supplemented and supported by a more detailed statement thereof, together with a further showing as to the necessity for the granting of this motion, in and by the brief in support hereof annexed to this motion, to which reference is hereby made.

Therefore said defendants move this Honorable Court under Rule 12(e) of the Federal Rules of Civil Procedure for an order requiring plaintiff to make a more definite statement of, and to furnish a bill of particulars as to the complaint as hereinafter specified, viz.:

I. Paragraph 12, page 7 et seq. of said complaint:

a. Designate which, if any (beside the defendant Isaac J. Collins), of the individual defendants on whose behalf this motion is filed are claimed to be members of the so-called "Levis Group".

b. Specify how, in what manner and by what means, it is claimed the defendant Isaac J. Collins, or any of the other individual defendants on whose behalf this motion is filed are "either closely related to or financially connected with, the defendants, William E. Levis and R. H. Levis".

c. State when and how it is claimed the defendant Isaac J. Collins, or any of the other individual defendants on
[fol. 117] whose behalf this motion is filed, became a member of the so-called "Levis Group".

d. State what individuals other than those so designated in Paragraph 12 of the complaint, are claimed to be members of the so-called "Levis Group".

II. Paragraph 51, page 23 of said complaint:

a. Specify whether the alleged agreement by the defendant Anchor Hocking Glass Corporation "not to engage

in such business (manufacture of heat-resisting ware) without first obtaining the consent of defendant Corning" was written or oral.

b. Specify with whom Anchor Hocking Glass Corporation is claimed to have made such alleged agreement.

c. Specify what person or persons represented the respective parties in making said alleged agreement.

d. Specify the time and place when such alleged agreement is claimed to have been made.

III. Paragraph 165, page 67 of said complaint:

a. Specify whether the "substantial block of stock in Hocking Glass Company" alleged to have been owned "prior to 1931" by "the Levis Group" is claimed to have been so owned "through Illinois Glass Company" or by an individual member or members of said "Levis Group"; if by the latter state the name or names of said individuals.

b. Specify the time or times said stock is claimed to have [fol. 118] been so owned and the amount of stock claimed so to have been owned.

c. State whether it is claimed that said "substantial block of stock" at any of said times constituted a "controlling" interest in Hocking Glass Company.

IV. Paragraph 167, page 68 of said complaint:

a. State what each of the defendants Hartford-Empire Company and Owens Illinois Glass Company did, either in conjunction with each other or otherwise, in arranging "for the reorganization of Turner Glass Company" and in "organizing General Glass Company" to acquire the assets of Turner Glass Company and how they participated in said reorganization of Turner Glass Company.

b. Specify whether it is claimed that the organization of General Glass Company and the acquisition by it of the assets of Turner Glass Company and the subsequent acquisition of all the stock of General Glass Company by Hocking Glass Company created or constituted one of the unlawful incidental "conspiracies, monopolies or restraints of trade" referred to in Paragraph 36 at page 18 of said complaint or is one of the acts alleged in Para-

graph 38, page 19 of said complaint to be wrongful, and if so, how such acts constituted, furthered, accomplished or carried out the alleged conspiracy, combination or monopoly in restraint of trade.

V. Paragraph 168, page 68 of said complaint:

a. Is the alleged agreement between General Glass Com-
[fol. 119] pany and Hartford-Empire Company "that an infringement suit theretofore instituted by Hartford against Nivison-Weiskopf Company would be settled and that Hartford would buy the Nivison-Weiskopf patents from General Glass" written or oral?

b. Specify the time when and place where said agreement is claimed to have been entered into.

c. What person or persons are claimed to have represented the respective parties in making said alleged agreement?

VI. Paragraph 169, page 68 of said complaint:

a. Specify what the defendants Hartford-Empire Company and Owens Illinois Glass Company did, either in conjunction with each other or otherwise, and what means or methods were used by said companies to induce "Hocking Glass Company, Hartford's licensee, and Anchor Cap Company to merge into defendant Anchor Hocking".

b. Specify how what Hartford and Owens are claimed to have done in this respect was "in furtherance of the conspiracy, monopoly, and combination in restraint of trade hereinbefore alleged".

c. Specify what defendant Anchor Hocking Glass Corporation is claimed to have done in joining, and how and by what means or methods it is claimed it "joined the conspiracy, monopoly and combination in restraint of trade"
[fol. 120] theretofore alleged to have existed.

Hugh C. Laughlin, Lancaster, Ohio; Welles, Kelsey, Cobourn & Harrington, 807 Ohio Building, Toledo, Ohio; Corbett and Mahoney, 820 Huntington Bank Building, Columbus, Ohio, Attorneys for the within named defendants.

Of counsel: Geo. D. Welles, Fred E. Fuller, Leslie Henry, 807 Ohio Building, Toledo, Ohio.

[fol. 121] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR MORE DEFINITE STATEMENT AND BILL OF PARTICULARS BY DEFENDANTS LYNCH CORPORATION, THOMAS CHANDLER WERBE, E. G. BRIDGES, A. G. DOLL, J. L. WATTS, UZ MCMURTRIE AND N. M. MCCULLOUGH—Filed Feb. 2, 1940

Now come the defendants Lynch Corporation, Thomas Chandler Werbe, E. G. Bridges, A. G. Doll, J. L. Watts, Uz McMurtrie and N. M. McCullough, by their attorneys, and represent to the Court that the Complaint in certain averments, as hereinafter referred to, is not sufficiently definite or concise to enable them properly to prepare responsive pleadings or to prepare for trial. Said defendants therefore move this Court for an order directing the plaintiff to serve [fol. 122] and file a more definite statement and a Bill of Particulars with respect to the following:

1. (Paragraph 33-c of Complaint) by stating:

(a) Whether it is by virtue of any contract or agreement now in force that it is claimed that "defendants Hartford and Lynch at the present time control and dominate the manufacture of forming machines."

(b) If the answer to (a) is in the affirmative, give the date of such contract or agreement, whether oral or written, the parties thereto, and if oral, state the substance thereof.

(c) The particular paragraphs of the complaint referred to by the words "by forming and carrying out the combination and conspiracy and by restraining trade and commerce in the manner hereinafter alleged" as applied to:

[fol. 123] 1st. The "forming and carrying out the combination and conspiracy" and

2nd. The "restraining trade and commerce".

2. (Paragraph 111 of the Complaint) by specifying whether it is the "principal" conspiracy referred to in Paragraph 35 that is intended by the allegation "defendants Owens and Hartford * * * induced defendant Lynch to join the combination and conspiracy, etc." or whether it

is one of the "other unlawful conspiracies, monopolies, or restaints of trade incidental to or a part of such principal conspiracy, monopoly, and combination in restraint of trade" referred to in Paragraph 36.

3. (Paragraph 119) State whether the acts set out in Paragraph 120 of the complaint are the acts referred to by the statement "defendants Owens, Hartford, and Lynch continued to combine and conspire for the purpose, etc." and if acts in other paragraphs are referred to, give the [fol. 124] numbers of such paragraphs.

A memorandum in support of this motion is appended to and filed herewith.

Respectfully submitted, Pence, O'Neill & Diven, Doyle & Lewis, Attorneys for defendants Lynch Corporation, Thomas Chandler Werbe, E. G. Bridges, A. G. Doll, J. L. Watts, Uz McMurtrie and N. M. McCullough.

Of Counsel: Albert Diven, Anderson Bank Building, Anderson, Indiana; Lehr Fess, Nicholas Bldg., Toledo, Ohio.

[fol. 125] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO MAKE COMPLAINT MORE DEFINITE AND FOR A BILL OF PARTICULARS—Filed Feb. 2, 1940

SIR: Now come the defendants Corning Glass Works, Empire Machine Company, Alexander D. Falck, Alanson B. Houghton, Amory Houghton, Arthur A. Houghton, Jr., Eugene C. Sullivan, William H. Curtiss, George D. Macbeth, Glen W. Cole, P. W. Jenkins, J. L. Peden, W. C. Decker, George B. Hollister and Arthur L. Day, by their attorneys, and move this Court for an order directing the plaintiff to furnish a more definite statement and a Bill of Particulars with respect to the complaint as follows:

I

As to the defendants Corning Glass Works, Empire Machine Company, Alexander D. Falck, Alanson B. Houghton, specify with respect to the allegations contained in: Paragraphs 35, 36, 37 and 38 of the Complaint:

(a) State whether plaintiff claims the principal conspiracy was entered into "on or about October 6, 1922", or whether plaintiff claims it was entered into "prior" thereto; and if prior thereto, state the approximate date thereof and at what time and by what transaction each of said defendants became a party thereto;

(b) Identify the "other" persons who plaintiff claims entered into the principal conspiracy with said defendants;

[fol. 126] (c) State whether plaintiff claims said defendants entered into any agreement on or about October 6, 1922 other than "Agreement for Formation of Hartford Empire Company" referred to in Paragraph 42 and "Agreement Relating to Patent Rights and Formulas" referred to in Paragraph 43 and if so identify each such agreement by stating the parties thereto and date thereof, and if oral, the substance thereof.

(d) Whether plaintiff claims by the allegation that certain things were "also contemplated as part of said conspiracy", that an agreement was made or an understanding reached by any of said defendants to do the things so alleged to be "also contemplated", and if so,

(1) State whether such agreement or understanding was expressed orally or in writing, the date thereof, the parties thereto and if the agreement was oral give the substance thereof.

(2) Whether plaintiff claims any of the specific agreements or acts alleged in the subsequent paragraphs of the complaint were "contemplated" and if so state which, giving the paragraph numbers of the complaint where the same are referred to.

(e) Identify by statement of subject-matter, parties and date each agreement or conspiracy other than the "principal conspiracy" of October, 1922, which plaintiff claims any of said defendants were parties to; specifying as to each of said defendants the approximate date when and the transaction by which plaintiff claims each said defendant became a party to each such agreement or conspiracy.

II

As to the defendants Amory Houghton, Arthur A. Houghton, Jr., Eugene C. Sullivan, William H. Curtiss, George

D. Macbeth, Glen W. Cole, P. W. Jenkins, J. L. Peden, W. C. Decker, George B. Hollister, Arthur L. Day, specify with respect to the allegations contained in: Paragraphs 35, 36, 37 and 38 of the Complaint:

[fol. 127] (a) When and where plaintiff claims each such defendant joined the "principal conspiracy";

(b) What act or acts plaintiff claims made each of said defendants a participant in the "principal conspiracy", specifying the time and place of each such act;

(c) Identify by statement of the subject-matter, parties and date each agreement or conspiracy other than the "principal conspiracy" of October, 1922, which plaintiff claims any of said defendants were parties to; specifying as to each of said defendants the approximate date when and the transaction by which plaintiff claims each said defendant became a party to each such agreement or conspiracy.

III

As to the defendant Corning Glass Works, specify with respect to the allegations of said complaint contained in:

(1) Paragraph 181 of the Complaint:

(a) Identify each act of "industrial espionage and similar tactics" which plaintiff claims defendant Corning engaged in, specifying the time and place of each such act;

(b) Identify the competitors or their licensees or users from whom plaintiff claims defendant Corning secretly sought to obtain information;

(c) Identify the patents for improvements which plaintiff claims defendant Corning applied for or obtained using secretly obtained information in order to "block off" and "fence in" patents of competitors, specifying as to each such Corning patent the information used when, how, by whom and from whom obtained and the name of the competitor and the patent blocked off or fenced in;

(d) Identify every act of defendant Corning which plaintiff claims prevented the development of new and different methods in automatic glass machinery outside the scope of the Hartford patents, specifying the time and place of each such act and the identify of the person prevented;

(e) Identify every act of defendant Corning which plaintiff claims discouraged others from developing or attempt-
[fol. 128] ing to develop competing machinery, specifying the time and place of each such act and the identity of the person discouraged;

(f) Identify each instance in which plaintiff claims defendant Corning threatened or conducted oppressive and harassing litigation, specifying the date thereof, the person threatened or sued, and the respects in which plaintiff claims such litigation threatened or conducted was oppressive or harassing;

(g) Identify every act of defendant Corning in addition to any acts specified in response to (a) to (f) inclusive above, which plaintiff claims said defendant committed for the purpose of harassing, discouraging or oppressing competition in the manufacture of automatic glass-making machinery, specifying the time and place of each such act, the competitor affected and the specific machinery in each instance.

(2) Paragraph 187 of the Complaint:

Identify the transaction alleged in this paragraph, stating the representative who plaintiff claims acted on behalf of Corning, the name of the investigator and the name of the competitor.

And for such other and further relief as may be deemed just and proper in the premises.

The defects complained of in the complaint are its obscurity and failure to apprise these defendants with definiteness and particularity of those charges against them as to which particulars are sought. It is necessary that these defendants be furnished a more definite statement and a bill of particulars as to the matters specified to enable them properly to prepare their answers to the complaint and properly to prepare for trial.

A further statement of the specific defects complained of in the complaint and the reasons why the particulars requested should be ordered is set forth in the annexed memorandum in support of this motion which is hereby made a part hereof.

Dated: Buffalo, New York, January 29, 1940.

Yours, etc., (S.) John Lord O'Brian, 505 Iroquois [fol. 129] Bldg., Buffalo, N. Y.; (S.) John B. McMahon, 1333 Nicholas Bldg., Toledo, Ohio, Solicitors for defendants Corning Glass Works, Empire Machine Company, Alexander D. Falck, Alanson B. Houghton, Amory Houghton, Arthur A. Houghton, Jr., Eugene C. Sullivan, William H. Curtiss, George D. Macbeth, Glen W. Cole, P. W. Jenkins, J. L. Peden, W. C. Decker, George B. Hollister and Arthur L. Day.

[fol. 130] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

BILL OF PARTICULARS IN RESPONSE TO MOTION OF DEFENDANTS BALL BROTHERS COMPANY, ET AL.—Filed Feb. 13, 1940

The government voluntarily files the following bill of particulars in response to a motion of defendants Ball Brothers Company, Frank C. Ball, George A. Ball, E. Arthur Ball, W. H. Ball, Edmund F. Ball, A. M. Bracken and Fred J. Petty, to make the complaint more definite and for a bill of particulars. The numbering in this bill of particulars follows that used in the said defendants' motion.

1(a) The act or activity claimed by the phrase, "maintaining monopolies of patents" (used in Paragraph 34 of the complaint), comprehends any agreement, arrangement, understanding, acquisition, suit, proceeding or act (alleged in succeeding paragraphs of the complaint) by any defendant or between or among any defendants in the case for the purpose or with the effect of combining under common ownership, influence, or control substantially all or the greater number of the known patents covering or relating to the manufacture and use of glass-making machines.

(b) Defendants Ball Brothers Company, Frank C. Ball, George A. Ball, E. Arthur Ball, W. H. Ball, Edmund F. Ball, A. M. Bracken, Fred J. Petty.

2. The allegations of Paragraph 35 are directed at the corporate and individual defendants named therein, at

the individual defendants J. D. Dilworth, F. Goodwin Smith and Arthur L. Day, and at Beech-Nut Packing [fol. 131] Company, Monongah Glass Company, Herbert Knox Smith, Arthur A. Houghton, H. L. Heintzelman, R. T. Cunningham, William A. Lorenz, Edward H. Lorenz, Ernest Walker Smith, Reginald Halliday, H. D. Gibson, Thomas W. Russell, Joseph Merritt, James W. Green, Vernon M. Dorsey, William Sinclaire and C. E. Githler.

3. (a) In Paragraph 36 plaintiff does claim that defendants Ball Brothers Company, Frank C. Ball, George A. Ball, E. Arthur Ball, W. H. Ball, Edmund F. Ball, A. M. Bracken and Fred J. Petty, joined the conspiracy referred to in Paragraph 35.

(b) In Paragraph 36 plaintiff also claims that defendants Ball Brothers Company, Frank C. Ball, George A. Ball, E. Arthur Ball, W. H. Ball, Edmund F. Ball, A. M. Bracken and Fred J. Petty, "joined other unlawful conspiracies, monopolies, or restraints of trade incidental to or part of such principal conspiracy, monopoly, and combination in restraint of trade. * * *"

(c) By entering into an agreement with defendant Hartford on March 25, 1933, as more specifically alleged in Paragraph 154 of the complaint, defendants Ball Brothers Company and Frank C. Ball, George A. Ball, E. Arthur Ball, W. H. Ball, Edmund F. Ball, A. M. Bracken or Fred J. Petty joined the principal conspiracy referred to in Paragraph 35 and the other conspiracies, monopolies and restraints of trade incidental thereto alleged in Paragraph 36 and continue to be and are parties to said conspiracies up to the present time.

4. Paragraph 37 is a general statement of the character and scope of the conspiracies alleged in Paragraphs 35 and 36. As plaintiff has indicated in Paragraph 38 the acts, activities and conduct of the various defendants in this case, including defendants Ball Brothers Company, Frank C. Ball, George A. Ball, E. Arthur Ball, W. H. Ball, Edmund F. Ball, A. M. Bracken and Fred J. Petty, are more fully set forth in the succeeding paragraphs of the complaint with respect to each of the matters specified in Subparagraphs (a) through (f) of Paragraph 37.

5. Paragraph 38 of the complaint is a general prefatory statement introductory to matters more specifically alleged in the succeeding paragraphs of the complaint.

[fol. 132] 6. Paragraph 143 contains general allegations introductory to matters more specifically alleged in succeeding paragraphs of the complaint. The request with respect to the act or acts of defendant Ball Brothers Company relied upon by plaintiff in charging that Ball Brothers Company joined the combination and conspiracy duplicates the requests of Item No. 3 of the present motion. The information here requested has been supplied above under that heading.

7. In Paragraph 151 plaintiff claims that defendants Ball Brothers Company and Hartford coerced and induced the Knox group of companies to enter into two agreements by threatening suit or suits for patent infringements and by offers of money payments and reduction of damages for past infringements.

Emerich B. Freed, United States Attorney. (Signed) John Paul Manton, Asst. U. S. Attorney. Samuel S. Isseks, Ernest S. Meyers, Special Assistants to the Attorney General. John W. Porter, Special Attorney.

Dated February 9, 1940.

[fol. 133] [File endorsement omitted]

[Title omitted]

IN UNITED STATES DISTRICT COURT

BILL OF PARTICULARS IN RESPONSE TO MOTION OF DEFENDANTS HARTFORD-EMPIRE COMPANY, ET AL.—Filed Feb. 13, 1940

The government voluntarily files the following bill of particulars in response to a motion of defendants, Hartford-Empire Company, F. Goodwin Smith, Bartlett Arkell, Robson D. Brown, John C. Hostetter, Roger M. Eldred, Karl E. Peiler, Arthur T. Safford, Jr., Theodore L. Champeau and A. M. Pease, to make the complaint more definite and for a bill of particulars. The numbering in this bill of particulars follows that used in the said defendants' motion.

1. (a) Plaintiff claims that defendants Hartford and Owens by means of agreements, contracts, understandings, and arrangements, written and oral, now in force, "at the present time control and dominate all competing patents and processes relating to gob feeding in the manufacture of glassware."

(b) Plaintiff claims that by virtue of its basic arrangements and understandings, both formal and informal and both written and oral, with defendant Corning and defendant Owens, and with other defendants as alleged in the complaint, defendant Hartford now is directly or indirectly party and privy to the contracts, agreements, suits, [fol. 134] threats of suit, acquisitions, proceedings and negotiations by which such control and domination were acquired and are maintained by defendants Hartford and Owens, as were particularly alleged in the following paragraphs of the complaint: 41, 42, 43, 44, 45, 55, 56, 60, 61, 62, 63, 67, 68, 69, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 107, 110, 111, 113, 114, 115, 116, 117, 119, 120, 122, 123, 124, 126, 127, 128, 131, 132, 133, 137, 138, 139, 140, 143, 144, 147, 149, 150, 151, 154, 155, 156, 168, 201, 202, 203.

(c) The paragraphs of the complaint to which the words "in the manner hereinafter alleged" refer in respect to (1) the "forming and carrying out the combination and conspiracy," and (2) "restraining trade and commerce" are set forth in sub-paragraph (b) hereof.

2. (a) Plaintiff claims that defendants Hartford and Lynch by means of agreements, contracts, understandings and arrangements, written and oral, now in force, "at the present time control and dominate the manufacture of forming machines."

(b) Plaintiff claims that defendants Hartford and Lynch jointly control and dominate the manufacture of forming machines at the present time by virtue of the written agreement between them dated August 23, 1933, and by virtue of an oral understanding which is alleged in paragraphs 116 and 117, and by virtue of contracts, agreements, understandings, suits, threats of suit, acquisitions, proceedings, and negotiations to which Hartford has been or is a party or privy by which such control and domination were acquired and are maintained, as is more par-

ticularly alleged in the paragraphs of the complaint set forth in paragraph 1(b) of this bill of particulars.

(c) The paragraphs of the complaint to which the words "in the manner hereinafter alleged" refer in respect to (1) the "forming and carrying out the combination and conspiracy," and (2) "restraining trade and commerce," [fol. 135] are the paragraphs set forth in sub-paragraph (b) of item 1 above.

3. (a) Plaintiff claims that defendant Hartford by means of agreements, contracts, understandings, or arrangements, written and oral, now in force "at the present time controls and dominates the manufacture of Lehr equipment."

(b) Plaintiff claims that by virtue of its basic arrangements and understandings, both formal and informal and both written and oral, particularly with defendants Corning and Owens and with the other defendants as alleged in the complaint, defendant Hartford now is directly or indirectly party and privy to the contracts, agreements, suits, threats of suit, acquisitions, proceedings and negotiations by which such control and domination of the manufacture of Lehr equipment were acquired and are maintained, as is more particularly alleged in the paragraphs of the complaint set forth in paragraph 1(b) above of this bill of particulars.

(c) The paragraphs of the complaint to which the words "in the manner hereinafter alleged" refer in respect to (1) the "forming and carrying out the combination and conspiracy," and (2) "restraining trade and commerce," are the paragraphs set forth in sub-paragraph (b) of item 1 above.

4. (a) and (b) Plaintiff claims that by virtue of its basic arrangements and understandings with defendants Corning, Empire-Machine, Owens, Hazel-Atlas, Lynch, and the other defendants alleged in the complaint, which are now in force, defendant Hartford now is, directly or indirectly, party and privy to the contracts, combinations and conspiracies to restrain interstate trade and commerce in glass making machinery and glass products manufactured thereby, which are generally alleged in paragraphs 34 to 37 inclusive of the complaint and which (as

stated in said paragraph 34) are set forth subsequently throughout the complaint, and which are more particu-
[fol. 136] larly alleged in the following paragraphs of the complaint: 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 55, 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 119, 120, 122, 123, 124, 126, 127, 128, 130, 131, 132, 133, 134, 135, 137, 138, 139, 140, 141, 143, 144, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 165, 166, 167, 168, 169, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 188, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 225, 226, 227, 228, 229, 230.

5. (a) Plaintiff claims that the "conspiracy" alleged in paragraph 35 of the complaint was reduced to writing on or about October 6, 1922; but was entered into prior thereto and probably as early as June 30, 1916, (the exact date being unknown to plaintiff) by virtue of an agreement, understanding or arrangement between Hartford-Fairmont Co. (the predecessor of defendant Hartford) and defendants Empire-Machine and Corning.

(b) The names of the "others" alleged to have conspired with the defendants named in paragraph 35 of the complaint are: J. D. Dilworth, F. Goodwin Smith and Arthur L. Day, defendants herein, and Beech-Nut Packing Company, Monongah Glass Company, Herbert Knox Smith, Arthur A. Houghton, H. L. Heintzelman, R. T. Cunningham, William A. Lorenz, Edward H. Lorenz, Ernest Walker Smith, Reginald Halliday, H. D. Gibson, Thomas W. Russell, Joseph Merritt, James W. Green, Vernon M. Dorsey, William Sinclaire and C. E. Githler.

(c) Plaintiff claims that an agreement, arrangement, or understanding was made to do the things so alleged to be "also contemplated":

[fol. 137] (1) Plaintiff claims that insofar as such agreement, arrangement or understanding was not set forth in the written agreements of October 6, 1922, alleged in paragraphs 42 and 43 of the complaint, they were both oral and in writing, and the substance thereof is more fully set

forth in the succeeding paragraphs of the complaint and more specifically in the paragraphs listed in sub-division 2 of this item;

(2) Plaintiff claims that agreements and acts alleged in the subsequent paragraphs of the complaint were "contemplated;" and such agreements and acts are alleged in the paragraphs listed in item 4 above.

6. The Plaintiff claims that the "principal" conspiracy relates to two subject matters: (1) patents on automatic machinery for the production of pressed and blown glassware and glass containers; and (2) machinery for the production of pressed and blown glassware and glass containers, and the distribution of such machinery; and that such principal conspiracy, as alleged in Paragraph 35, was entered into by the parties referred to in such paragraph.

The "incidental" conspiracies referred to in Paragraph 36 of the complaint and the time of the formation of each such conspiracy are as follows:

(1) The conspiracy with respect to the manufacture and distribution of pressed and blown glassware and particularly heat resisting glassware coincided with the principal conspiracy and was formed prior to or on or about October 6, 1922.

(2) The conspiracy with regard to the manufacture and distribution of all kinds of glass containers was formed in part at the time of the principal conspiracy prior to or on or about October 6, 1922, and was expanded on April 9, 1924.

(3) The conspiracy with regard to the manufacture and distribution of milk bottles was subsidiary to and a part of the conspiracy with regard to all kinds of glass containers but the plaintiff claims that such conspiracy was more fully developed on or about April 13, 1928 when [fol. 138] defendants Hartford and Thatcher entered into the agreement referred to in Paragraph 133 of the complaint.

(4) The conspiracy with regard to the manufacture and distribution of fruit jars was subsidiary to and a part of the conspiracy with regard to all kinds of glass containers

but the plaintiff claims that such conspiracy was more fully developed on or about March 25, 1933.

The date when each corporate defendant joined the principal and incidental conspiracies is as follows:

Hartford—prior to or on or about October 6, 1922, through its predecessor, Hartford-Fairmont.

Corning—prior to or on or about October 6, 1922.

Empire Machine—prior to or on or about October 6, 1922.

Owens—on or about April 9, 1924.

Hazel-Atlas—on or about July 1, 1932.

Thatcher—prior to or on or about October 6, 1922.

Lynch—on or about August 23, 1933.

Ball Brothers—on or about March 25, 1933.

Anchor Hocking—on or about January 7, 1924, through its predecessor, Hocking Glass Company.

Liberty—on or about May 25, 1926.

The Stevenson Corporation—in or about March, 1928.

Glass Container Association—in or about March, 1928.

Defendant Charles R. Stevenson joined the principal and incidental conspiracies in or about March, 1928, and defendant Emory G. Ackerman joined the principal and incidental conspiracies on or about September 10, 1929.

Each of the other individual defendants joined the principal and incidental conspiracies either at the time they each became officers or directors of the respective corporate defendants herein, or on the date when the respective corporate defendants herein joined the said conspiracies, whichever was earlier.

[fol. 139] 7 (a) Plaintiff claims that the conflicting patents and patent applications acquired by defendants Hartford and Owens, (presently known to plaintiff), intended by the allegations of Paragraph 72 of the complaint, the dates of the respective acquisitions and the names of the respective vendors, were:

Patent Number	*Inventor*	*Date of Acquisition*	*Vendor*
1,217,102	O'Neill	1933	O'Neill Suction Machine Company
1,231,188	O'Neill	1933	O'Neill Suction Machine Company
1,231,610	Howard	1921	Howard
1,315,668	Howard	1921	Howard
1,315,983	O'Neill	1933	O'Neill Suction Machine Company
1,343,188	Sears	1925	Unknown to plaintiff
1,365,541	Rankin	1928	Pratt

Patent Number	*Inventor*	*Date of Acquisition*	*Vendor*
1,368,654	Lobb	1925	Unknown to plaintiff
1,413,188	O'Neill	1933	O'Neill Suction Machine Company
1,413,757	Miller	1925	Miller Glass Engineering Company
1,451,707	Miller	1925	Miller Glass Engineering Company
1,462,401	Miller	1925	Miller Glass Engineering Company
1,462,652	O'Neill	1933	O'Neill Suction Machine Company
1,490,182	O'Neill	1933	O'Neill Suction Machine Company
1,512,566	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,516,220	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,518,109	Rankin	1928	Pratt
1,519,885	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,532,254	Miller	1925	Miller Glass Engineering Company
1,534,996	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,537,961	O'Neill	1933	O'Neill Suction Machine Company
1,537,962	O'Neill	1933	O'Neill Suction Machine Company
1,537,963	O'Neill	1933	O'Neill Suction Machine Company
1,540,894	Miller	1925	Miller Glass Engineering Company
1,544,987	Howard	1921	Howard
1,549,206	Miller	1925	Miller Glass Engineering Company
1,551,526	O'Neill	1933	O'Neill Suction Machine Company
1,599,790	Rankin	1928	Pratt

[fol. 140]

1,600,361	Rankin	1928	Pratt
1,602,926	O'Neill	1933	O'Neill Suction Machine Company
1,604,000	Tucker, et al	1925	Tucker, Reeves and Beatty
1,608,967	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,611,362	O'Neill	1933	O'Neill Suction Machine Company
1,611,363	O'Neill	1933	O'Neill Suction Machine Company
1,621,426	Miller	1925	Miller Glass Engineering Company
1,631,061	Rankin	1928	Pratt
1,642,660	O'Neill	1933	O'Neill Suction Machine Company
1,642,966	Miller	1925	Miller Glass Engineering Company
1,642,967	Miller	1925	Miller Glass Engineering Company
1,642,968	Miller	1925	Miller Glass Engineering Company
1,654,710	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,658,735	O'Neill	1933	O'Neill Suction Machine Company
1,681,127	Miller	1933	Ed Miller Machine and Mold Company
1,684,064	Miller	1933	Ed Miller Machine and Mold Company
1,697,906	Nagle	1937	Nagle
1,706,037	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,706,069	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,717,802	Miller	1933	Ed Miller Machine and Mold Company
1,738,479	Miller	1933	Ed Miller Machine and Mold Company
(Reissues and	17,761 18,581)		
1,738,499	Miller	1933	Ed Miller Machine and Mold Company
1,748,462	Rankin	1928	Pratt
1,756,100	Tucker, et al.	1925	Tucker, Reeves and Beatty

Patent Number	Inventor	Date of Acquisition	Vendor
1,758,085	O'Neill	1933	O'Neill Suction Machine Company
1,760,999	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,773,539	Miller	1933	Ed Miller Machine and Mold Company
1,803,052	Nagle	1937	Nagle
1,828,674	Miller	1933	Ed Miller Machine and Mold Company
1,864,275	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,864,276	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,864,277	Tucker, et al.	1925	Tucker, Reeves and Beatty
[fol. 141]			
1,864,278	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,864,279	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,879,420	Nagle, et al.	1937	Nagle
1,906,086	O'Neill	1933	O'Neill Suction Machine Company
1,908,936	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,948,218	Headley, et al.	1933	Whitall-Tatum Company
1,948,219	Headley, et al.	1933	Whitall-Tatum Company

(b) The other means by which defendants Hartford and Owens carried out the campaign alleged in Paragraph 72 are more particularly set forth in the following paragraphs of the complaint: 80, 81, 82, 87, 91, 94, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 126, 127, 128, 132, 133, 137, 138, 143, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 165, 166, 167, 168, 173, 174, 181, 182, 183, 184, 185, 186, 187, 201, 202, 203.

8. The existing Nivison-Weiskopf licensees, presently known to plaintiff, who were either eliminated from competition or became licensees of defendant Hartford, as alleged in Paragraph 81 of the complaint, were the W. T. Rawleigh Glass Company.

9. The miscellaneous acquisitions by defendants Hartford and Owens, presently known to the plaintiff, in addition feeders.
to those already listed under item 7 above, together with the respective dates thereof, the names of the vendors, and the nature of the property transferred, were as follows:

Universal Glass Products Co., September 15, 1932, 5 Miller and 1 Knox-O'Neill air displacement feeders.

Lamb Glass Co., November 10, 1932, 8 Miller and 1 Stuckey feeders.

Latchford Glass Co., December 7, 1932, 5 Bethel feeders, and patents and applications.

Knox Glass Bottle Co., 1932, Kucera and Miller feeders.

Nivision-Weiskopf Glass Co., 1932, Nivision-Weiskopf

Maywood Glass Co., December 16, 1932, 2 Bethel (Maywood) feeders.

[fol. 142] Diamond Glass Co., March 27, 1933, 2 Miller and 5 O'Neill feeders.

Sterling Glass Co., July 7, 1933, 3 Miller and 1 Meyer feeders, and patents and applications.

Northwestern Glass Company, August 1, 1933, 2 O'Neill and 1 Meyer feeders.

Brockway Glass Co., September 12, 1933, 4 Miller and 10 Harding feeders.

Phoenix Glass Co., September 12, 1933 (same as Brockway).

Knape-Coleman Company, 1934, Miller machines.

Fairmount Glass Works, Inc., April 30, 1934, 15 Rau and 1 Shawkee feeders.

Three Rivers Glass Co. (by Ball Bros.), 1936, Tremblay Feeders, and patents.

Tygart Valley Glass Co., February 18, 1936, 13 Tygart feeders, and Stewart and Noble patents.

10. Plaintiff claims that the particulars requested in each of the sub-paragraphs (a) through (e) of this item are evidentiary and within the knowledge and records of the defendant Hartford.

(a) As an illustration of the facts alleged in Paragraph 91 of the complaint, 112 applications for patents were made by inventors employed by Hartford during the years 1927, 1928 and 1929. These applications, among others (according to a memorandum dated February 18, 1930, Exhibit 125, Hearings by the Temporary National Economic Committee, Part 2, pursuant to Public Resolutions No. 113, 75th Congress) were acquired by Hartford by assignment or purchase from the inventors.

The machines, presently known to plaintiff, were: Hillman, Roirant, Knox-O'Neill, improved steam feeders, vacuum and pressure feeders, ribbon feeders, forced feeding or down suction feeding, auto-blow methods of feeding, as well as various types of pure forming machines, and lehrs, stackers, escalator bucks and shaping machines.

(b) The patents, improvements and machines referred to are those covered and claimed in the 112 patents or appli-

cations for patents referred to in the sub-paragraph (a) of this item. The competitors, presently known to plaintiff, were among those listed in item 7(a) above.

Number	Parties	Declared	Termination
39,374	Peiler Chamberlin	1/18/16	2/26/23
39,375	Peiler Chamberlin Wadsworth Tucker & Reeves	1/18/16	5/16/18
39,376	Tucker & Reeves Wadsworth Peiler Lott	1/18/16	4/8/25
39,377	Drey Chamberlin Peiler Steimer	1/18/16	2/8/19
39,378	Drey Peiler	1/18/16	3/5/23
39,379	Drey Chamberlin Peiler	1/18/16	1/4/19
39,428	Chamberlin Peiler	1/18/16	2/26/23
39,429	Tucker & Reeves Wadsworth Chamberlin Peiler	1/18/16	7/29/18
40,122	Peiler Howard	6/13/16	8/19/16
40,515	Bowman Stenhouse Peiler	9/19/16	8/22/17
40,663	Tucker & Reeves Drey Wadsworth Peiler Chamberlin	10/24/16	9/1/17
40,664	Drey Peiler Chamberlin	10/24/16	9/1/17
40,665	Sears Peiler Chamberlin Steimer Lott	10/24/16	7/29/18
42,601	Peiler Chamberlin	7/23/18	2/26/23
[fol. 144]			
42,765	Drey Peiler Steimer	10/1/18	2/8/19
43,442	Peiler Lott	6/10/19	11/27/26
44,251	Steelman Peiler Tucker & Reeves	1/27/20	12/3/25
44,252	Tucker & Reeves Peiler	1/27/20	2/1/22
44,608	Carnahan Peiler Bridges	5/4/20	5/26/21

Number	Parties	Declared	Termination
44,609	Bridges Peiler	5/4/20	11/29/20
44,610	Peiler Bridges	5/4/20	11/13/20
44,780	Mulholland & Peiler Whittemore	7/6/20	5/5/23
45,287	Miller Howard Steimer	11/9/20	9/14/23
45,288	Miller Steimer	11/9/20	11/10/21
46,677	Tucker & Reeves Peiler	11/16/21	8/14/25
47,297	LaFrance Peiler	3/28/22	9/26/25
48,197	Miller Keller Soubier Ferngren Rankin	10/6/22	10/26/25
48,198	Miller Soubier Ferngren Rankin	10/6/22	5/19/25
48,199	Howard Miller Soubier Rankin Gaynor Stenhouse	10/6/22	1/22/26
48,200	Owens Ferngren	10/6/22	2/7/25
48,225	Lents Ferngren	10/6/22	1/17/23
48,265	LaFrance Ripley	10/24/22	7/27/23
[fol. 145]			
48,266	Soubier Ripley	10/24/22	1/5/25
48,267	LaFrance Lorens Ripley	10/24/22	6/5/26
48,326	Bridges Howard Peiler Lott Tucker & Reeves Ferngren Steimer Miller	12/13/22	9/23/25
48,327	Peiler Bridges Lott Tucker & Reeves Ferngren Howard Steimer Miller	12/13/22	9/23/25
48,328	Peiler Bridges Lott Howard Tucker & Reeves Miller	12/13/22	9/23/25

Number	Parties	Declared	Termination
48,329	Bridges Peiler Lott Tucker & Reeves Howard Miller	12/13/22	9/23/25
48,330	Peiler Bridges Howard Tucker & Reeves	12/13/22	9/23/25
48,331	Bridges Tucker & Reeves Peiler Howard	12/13/22	11/1/24
48,413	Bridges Peiler Howard	12/13/22	11/6/23
48,414	Peiler Bridges Howard	12/13/22	11/16/25
48,415	Peiler Bridges Howard Lott Miller	12/13/22	9/23/25
[fol. 146]			
48,416	Bridges Howard	12/13/22	11/6/23
48,447	Bridges Tucker & Reeves Ferngren Lott Peiler Howard Steimer Miller	12/13/22	9/23/25
48,567	Peiler Kucera	1/4/23	9/12/23
48,582	Graham Headley & Thompson Sears	3/15/24	4/4/25
48,749	Keller Drey Soubier	2/20/23	10/8/23
48,948	Peiler Whittemore	3/16/23	4/3/25
49,069	Peiler LaFrance Miller	4/5/23	9/26/25
49,822	Steimer Howard	9/6/23	9/2/24
50,236	Peiler Rankin	11/22/23	2/24/25
50,632	Gayner Rankin Howard Morrison Miller Soubier Stenhouse	2/28/24	11/2/25
50,700	Sears Headley & Thompson	3/15/24	4/4/25

	Number	Parties	Declared	Termination
	50,772	Peiler Soubier	3/29/24	1/13/25
	50,773	Peiler Soubier	3/29/24	1/13/25
	50,774	Peiler Soubier	3/29/24	1/13/25
	50,782	Soubier LaFrance Lobb	4/4/24 9/6/30 reopened	9/27/27
[fol. 147]				
	50,783	Miller LaFrance Lobb	4/4/24	6/15/27
	50,784	Miller Lobb	4/4/24	6/15/27
	50,785	Grannan Lobb	4/4/24	9/12/27
	50,890	Miller Ferngren Tucker & Reeves Howard	4/29/24	10/9/25
	50,891	Miller Peiler Tucker & Reeves Howard	4/29/24	10/9/25
	50,892	Miller Tucker & Reeves	4/29/24	4/8/25
	50,893	Miller Howard Ferngren Peiler	4/29/24	4/8/25
	50,894	O'Neill Ferngren	4/29/24	2/16/25
	50,895	Miller Howard Peiler	4/29/24	10/9/25
	50,926	Howard Miller	5/7/24	11/18/24
	51,026	Lorens Soubier Lobb	5/29/24	10/3/25
	51,313	Steimer Tucker & Reeves Miller Peiler Stenhouse	7/31/24	9/24/25
	51,314	Steimer Tucker & Reeves Stenhouse Rankin Miller Peiler Howard	7/31/24	8/17/25
	51,578	Plaukharp et al. Lorens	10/16/24	4/14/30
	51,876	Tucker & Reeves Steimer	1/17/25	11/6/25
[fol. 148]				
	52,072	Steimer Stenhouse	2/18/25	7/1/25
	52,257	Cramer Peiler Tucker & Reeves Ferngren	4/9/25	3/1/26

	Number	Parties	Declared	Termination
	52,258	Peiler Tucker & Reeves Ferngren	4/9/25	3/1/26
	52,259	Cramer Peiler Tucker & Reeves	4/9/25	1/27/26
	52,260	Peiler Lott Tucker & Reeves	4/9/25	12/28/26
	52,338	O'Neill Howard	4/17/25	7/6/25
	53,342	Winder et al. Howard	1/27/26	7/27/26
	53,436	Rankin Howard	2/13/26	11/30/28
	53,504	Stenhouse et al. Peiler Lorens	3/9/26	2/15/27
	53,835	Soubier Howard	5/22/26	5/7/27
	53,729	Soubier Rankin	6/5/26	6/4/29
	53,852	Henning Peiler	5/22/26	8/28/26
	54,021	Henning Soubier Peiler	6/30/26	3/12/27
	54,328	Ganter Budd	9/25/26	7/27/29
	54,330	Black Howard	9/25/26	10/19/26
	54,958	Willetts Fulcher	2/24/27	7/6/31
	54,997	Lobb LaFrance	3/2/26	9/27/27
	55,101	Sloan Peiler	3/25/27	6/1/27
	55,240	Ross et al. Willetts Fulcher	4/23/27	12/5/29
[fol. 149]				
	55,295	Peiler Hoffman et al.	5/4/27	9/30/27
	55,420	Boudin Howard	6/3/27	10/10/28
	55,441	Tucker & Reeves Stenhouse	6/9/27	11/17/30
	55,646	Nesbitt Amsler Mulholland	7/23/27	12/10/30
	55,647	Mulholland Amsler	7/23/27	1/14/28
	56,234	Peiler Ferngren	1/17/28	10/15/28
	56,263	Allen Black	1/20/28	4/6/28
	56,367	Peiler Ingle Soubier	2/9/28	10/8/28
	56,370	Mambourg Howard	2/9/28	5/22/30
	56,579	Lorens Miller	3/23/28	6/8/28
	56,989	Morton et al. Hiller	6/8/28	10/10/30

Number	Parties	Declared	Termination
57,026	Lorens O'Neill	6/28/28	10/21/29
57,809	Amsler Williams	1/20/29	6/14/29
58,895	Black Allen	9/20/29	4/27/31
58,917	Randall Cramer	9/25/29	1/4/30
59,168	Raeder Hitner	12/5/29	8/13/30
59,317	Willetts Ross et al.	1/10/30	11/24/31
59,471	Woodman Schroder	2/4/30	4/12/30
[fol. 150]			
59,967	Amsler Allen	5/29/30	2/16/31
60,700	Soubier Peiler	11/5/30	1/22/31
60,734	O'Neill Peiler	11/18/30	4/16/31
60,735	Fithian Lobb	11/12/30	2/19/31
61,630	Hoge et al. Canfield	5/7/31	7/16/31
62,569	Bethel Miller	3/3/32	7/15/32
62,611	Peiler Algeo & Ross	10/31/31	12/31/31
62,766	Kinker Rule Peiler	11/18/31	11/3/33
62,767	Kinker Peiler	11/18/31	6/16/33
62,768	Rule Peiler	11/18/31	2/18/32
63,120	Peiler O'Neill	2/13/32	7/20/33
63,765	Thompson Willetts	5/4/32	3/30/33
64,654	Harding Peiler	9/13/32	5/5/33
64,844	Batchell Canfield Morton	10/19/32	5/1/34
64,845	Canfield Morton	10/19/32	8/4/33
66,503	Rowe Kadow	6/16/33	11/9/33
66,908	Canfield O'Neill	9/13/33	1/4/34
66,913	Bridges Peiler	9/13/33	11/9/33
69,322	Batchell Riley	9/14/34	7/12/35
[fol. 151]			
69,357	Amsler McIntyre Stuart	9/19/34	9/5/35
70,333	Stewart Honiss	2/26/35	9/17/35
71,782	Honiss Wadsworth	11/21/35	9/10/36
73,076	Drake Mulholland	7/7/36	7/24/36

Number	Parties	Declared	Termination
73,253	Henkel Honiss Morton	9/21/36	11/30/36
73,363	Honiss Morton	9/21/36	11/30/36
73,379	Eastwood Nagle	9/30/36	10/20/36
73,801	Stuckey Kucera	1/13/37	pending
75,007	Merrill Cone	11/22/37	pending

[fol. 152] (e) (1) (2) (3) (4) (5). As of August 26, 1938, Hartford owned 820 patents, 254 of which it had acquired from persons other than its own employees. In at least one instance Hartford obtained the issuance of an improvement patent (Peiler, No. 1655391, issued January 2, 1928) before the issuance of the basic patent (Steimer, No. 2073571, application filed in 1910, assigned to Hartford in 1917 and issued March 9, 1937) by delaying the issuance of the basic patent, and thereby extended its control over the process covered by the patent for an additional nine years.

11. Other paragraphs in which plaintiff claims other acts on the part of the moving defendants under the general allegations of Paragraph 122 are as follows: 34, 36, 37, 38, 88, 89, 91, 127, 181, 200, 201, 202, 203, 219, 225, 230.

12. Other paragraphs wherein plaintiff claims other acts on the part of the moving defendants in furtherance of the conspiracy alleged in paragraphs 128 to 142, inclusive, and in addition thereto are as follows: 34, 36, 37, 38, 92, 93, 167, 171, 173, 174, 175, 176, 177, 179, 180, 181, 206, 207, 211, 217, 218, 227, 228, 230.

13. (a) Other paragraphs wherein plaintiff claims other acts on the part of the moving defendants in furtherance of the conspiracy alleged in paragraphs 142 to 164, inclusive, and in addition thereto are as follows: 34, 36, 37, 38, 92, 93, 171, 173, 174, 175, 176, 177, 178, 179, 180, 181, 206, 207, 211, 217, 218, 227, 229, 230.

(b) Plaintiff claims that the license of Gayner Glass Works to manufacture fruit jars was not renewed by Hartford.

14. (a)(1) Plaintiff claims that defendants Hartford and Owens have stabilized the prices of the following leading producers in the glass container industry with respect to the types of glass containers listed opposite their names:

Owens-Illinois Glass Co.—Milk bottles, packer's ware, wide mouth bottles, pressure and nonpressure ware, beer bottles, liquor ware, medicinal and toilet ware, general purpose containers, narrow neck bottles, fruit jars.

[fol. 153] Owens-Illinois Pacific Coast Company—Milk bottles, narrow neck bottles, wide mouth bottles, pressure and nonpressure ware, beer bottles, wine bottles, liquor ware, medicinal and toilet ware, general purpose containers, fruit jars.

Liberty Glass Company—Milk bottles.

Thatcher Manufacturing Company—Milk bottles, narrow neck bottles, wide mouth bottles, liquor ware.

Ball Brothers Company—Fruit jars, narrow neck bottles, wide mouth bottles, pressure and nonpressure ware, beer bottles, liquor ware, medicinal and toilet ware, general purpose containers, jelly glasses.

Hazel-Atlas Glass Co.—Fruit jars, narrow neck bottles, pressed ware, wide mouth bottles, pressure and nonpressure ware, beer bottles, liquor ware, medicinal and toilet ware, general purpose containers, jelly glasses.

Anchor Hocking Glass Corporation—Narrow neck bottles, pressed ware, wide mouth bottles, pressure and nonpressure ware, beer bottles, liquor ware, medicinal and toilet ware, general purpose containers.

The uniform and non-competitive prices so established and enforced were the current prices for the various types and classes of glass containers fixed from time to time by the respective price leaders in each field of ware in the glass container industry, as alleged in paragraph 180 of the complaint.

(2) Plaintiff claims that defendants Hartford and Owens have coerced and admonished the following manufacturers of glass containers, presently known to plaintiff, designated by or to said defendants as "price cutters," to [fol. 154] maintain uniform and non-competitive prices on the following types and classes of ware:

Three Rivers Glass Co.—Fruit jars, milk bottles.

F. E. Reed Company—Milk bottles, fruit jars, beer bottles, narrow neck bottles, liquor ware, medicinal and toilet ware, general purpose containers.

Glenshaw Glass Company—Narrow neck bottles, pressure and nonpressure ware, beer bottles, liquor ware, general purpose containers.

Diamond Glass Company—Narrow neck bottles, wide mouth bottles, pressure and nonpressure ware, liquor ware, medicinal and toilet ware, general purpose containers.

Weston Glass Company.

Louie Glass Company.

Tygart Valley Glass Co.—Narrow neck bottles, wide mouth bottles, medicinal and toilet ware, general purpose containers.

Peerless Glass Company—Milk bottles.

Knox Glass Bottle Co. & Knox Glass Associates, Inc.—Milk bottles, fruit jars, narrow neck bottles, wide mouth bottles, pressure and nonpressure ware, beer bottles, liquor ware, medicinal and toilet ware, general purpose containers.

Knape-Coleman Company—Milk bottles.

Nivison-Weiskopf Co.

Florida Glass Manufacturing Company—Milk bottles, wide mouth bottles, pressure and nonpressure ware, beer bottles, general purpose containers.

Universal Glass Products Company—Milk bottles.

Lamb Glass Company—Milk bottles.

[fol. 155] (b) Plaintiff claims that the moving defendants have participated in concerted action for the purpose of establishing, agreeing upon, maintaining, and enforcing a system of price leadership, as alleged in paragraph 180 of the complaint, by suits, refusals to license, refusals to renew or extend existing licenses or parts thereof, by restrictions, exclusions, limitations imposed in license agreements and threats of some or all of such measures, by agreements, contracts, and understandings with respect to prices, as well as by the policies, acts, and conduct alleged in paragraphs 176 to 180 of the complaint inclusive.

(c) The acts and things plaintiff claims to have been done by defendant Hartford, presently known to plaintiff, whereby it has used and is now using its power and domination to enforce this system of price leadership and to prevent sales of containers at less than prices fixed by the respective price leaders are those set forth in subparagraphs (a) and (b) above.

15. Plaintiff claims that the following licensees of Hartford were prevented or are now being prevented directly or indirectly "from expanding their businesses into various parts of the United States" by restrictions upon the number of feeding machines permitted to such licensees, under agreements presently known to the plaintiff, bearing the following dates:

American Thermos Bottle Company, December 22, 1931.
Ball Brothers Company, March 25, 1933.
Bartlett-Collins Company, March 6, 1937.
Brockway Machine Bottle Company, January 23, 1933, (as amended September 12, 1933 and December 26, 1934).
Buck Glass Company, January 11, 1926.
Capstan Glass Company, February 17, 1926 and May 1, 1934.
Carr-Lowrey Glass Company, October 30, 1924 (amended May 20, 1930, renewed October 30, 1932).
Chattanooga Bottle and Glass Manufacturing Company, August 21, 1923, renewed August 21, 1931.
Diamond Glass Company, March 27, 1923.
Fairmount Glass Works, Inc., April 30, 1934.
Florida Glass Manufacturing Company, August 2, 1935.
Foster-Forbes Glass Company, June 4, 1925 (amended November 25, 1931, renewed June 4, 1933).
Gayner Glass Works, December 31, 1935.
General Glass Company, September 16, 1932; March 23, 1933; and March 4, 1937.
Glenshaw Glass Company, October 8, 1928 (renewed October 3, 1936).
J. T. & A. Hamilton Company, April 16, 1923 (renewed April 16, 1931).
Hart Glass Manufacturing Company, December 22, 1925.
Hazel-Atlas Glass Company, July 1, 1932.
H. J. Heinz Company, December 31, 1925 (amended March 10, 1927 and July 15, 1932—renewed January 4, 1934).
[fol. 156] Hocking Glass Company, December 7, 1935.
Jeanette Shade and Novelty Company, June 1, 1930.
Knox Glass Associates (Pennsylvania Bottle Company, Knox Glass Co., Marienville Glass Company, Wightman Bottle and Glass Manufacturing Company, Oil City Glass

Bottle Company)—August 25, 1932 (as amended December 6, 1932).

Lamb Glass Company, November 10, 1932 (Supplemental Agreement January 24, 1933).

Latchford Glass Company, December 7, 1932 (amended November 8, 1935 and May 7, 1936).

Laurens Glass Works, Inc., June 9, 1924 (amended November 24, 1924 and August 22, 1929, renewed June 9, 1932).

Libbey Glass Company, February 25, 1938.

Liberty Glass Company, May 25, 1926 (amended November 25, 1931 and May 22, 1933, renewed May 28, 1934).

Glass Containers, Inc., July 27, 1929, (renewed July 29, 1937).

McKee Glass Company, July 18, 1928 (renewed July 14, 1936).

Maryland Glass Corporation, April 15, 1928, (renewed March 30, 1933).

Maywood Glass Company, December 16, 1932.

Pierce Glass Company, July 2, 1923, (renewed July 14, 1937).

Salem Glass Works, January 25, 1937.

Swindell Brothers, July 28, 1927 (renewed July 29, 1935).

Sterling Glass Company, July 7, 1933.

Thatcher Manufacturing Company, December 8, 1920; April 13, 1928 and January 1, 1936.

Tygart Valley Glass Company, February 18, 1936.

Universal Glass Products Company, September 15, 1932.

Whitall Tatum, February 9, 1925.

16. (a) Plaintiff claims that the policy referred to in Paragraph 205 of the complaint was formulated by defendants Hartford and Owens jointly and carried out by said defendants jointly and severally and as a result in part of: (1) each and every written agreement entered into by and between defendants Hartford and Owens; (2) each and every written agreement entered into by and between defendant Hartford and any other defendant herein (excluding defendant Owens); (3) each and every written agreement entered into by and between defendant Owens and any other defendant herein (excluding defendant Hartford); (4) each and every written license agreement entered into by defendant Hartford, with any person, relating to the use of machinery for the production of glass containers; (5) each

and every written license agreement entered into by every other defendant herein, with any person, relating to the use of machinery for the production of glass containers.

(b) The agreements referred to in Paragraph 206 of the complaint (in addition to those listed in Paragraphs 126, [fol. 157] 127 and 212 to 216 inclusive) are those contracts, agreements, arrangements and understandings set forth in the paragraphs listed under item 4 above.

Emerich B. Freed, United States Attorney. (Signed) John Paul Manton, Asst. U. S. Attorney.

Dated at Washington, D. C., on February 10, 1940.

Samuel S. Isseks, Ernest S. Meyers, Special Assistants to the Attorney General; John W. Porter, Special Attorney.

[fol. 158] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

BILL OF PARTICULARS IN RESPONSE TO MOTION OF DEFENDANTS OWENS-ILLINOIS GLASS COMPANY, ET AL.—Filed February 13, 1940

The government voluntarily files the following bill of particulars in response to a motion of defendants Owens-Illinois Glass Company, William E. Levis, F. J. Solon, E. F. Martin, F. T. Nesbitt, John H. McNerney, R. H. Barnard, C. B. Belknap, Harold Boeschenstein, W. H. Boshart, H. E. Collin, George P. Greenhalgh, Ben F. Hazelton, Jr., W. W. Knight, R. H. Levis, F. H. McAdoo, H. G. Phillipps, C. J. Root, F. W. Schwenck, and C. J. Wilcox to make the complaint more definite and for a bill of particulars. The numbering in this bill of particulars follows that used in the said defendants' motion.

1. Plaintiff claims, by virtue of its basic arrangements and understandings, both formal and informal and both written and oral, with defendant Hartford, defendant Owens at all times has been and now is, directly or indirectly, party and privy to the contracts, agreements, suits, threats of suit, acquisitions, proceedings and negotiations by which such control and domination were acquired and

are maintained by defendants Hartford and Owens. The said contracts, agreements, suits, threats of suit, acquisitions, proceedings, and negotiations are, as alleged in said Paragraph 33 (b), set forth subsequently throughout the complaint, and are more particularly alleged in the fol-
[fol. 159] lowing paragraphs: 41, 42, 43, 44, 45, 55, 56, 60, 61, 62, 63, 67, 68, 69, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 107, 110, 111, 113, 114, 115, 116, 117, 119, 120, 122, 123, 124, 126, 127, 128, 131, 132, 133, 137, 138, 139, 140, 143, 144, 147, 149, 150, 151, 154, 155, 156, 168, 201, 202, 203.

2. Plaintiff claims that, by virtue of its basic arrangements and understandings with defendant Hartford, which are now in force, defendant Owens at all times has been and now is, directly or indirectly, party and privy to the contracts, combinations and conspiracies to restrain interstate trade and commerce in glass making machinery and glass products manufactured thereby, which are generally alleged in Paragraphs 34 to 37 inclusive of the complaint, which (as stated in said Paragraph 34) are set forth subsequently throughout the complaint, and which are more particularly alleged in the following paragraphs: 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 55, 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 119, 120, 122, 123, 124, 126, 127, 128, 130, 131, 132, 133, 134, 135, 137, 138, 139, 140, 141, 143, 144, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 165, 166, 167, 168, 169, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 188, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 225, 226, 227, 228, 229, 230.

3. (a) Plaintiff claims that the defendant Owens joined the conspiracy referred to in Paragraph 35 by entering into the agreement of April 9, 1924 with defendant Hartford, that those of the moving defendants named in Paragraph 20 of the complaint who were officers, directors or employees of the defendant Owens on April 9, 1924 joined
[fol. 160] the said conspiracy at the same date and that those of the moving defendants named in the said Para-

graph 20 who became officers, directors or employees of the defendant Owens subsequent to April 9, 1924 joined the said conspiracy as of the date on which each of them first became an officer, director or employee of the defendant Owens.

(b) The paragraphs of the complaint wherein is alleged the joining by these moving defendants respectively of other unlawful conspiracies, monopolies, or restraints of trade incidental to or part of such principal conspiracy, monopoly, and combination in restraint of trade, are as follows: 94, 95, 96, 97, 98, 99, 102, 103, 104, 105, 106, 108, 111, 112, 113, 114, 119, 120, 121, 122, 123, 124, 125, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 185, 228, 229, 230.

(c) The Plaintiff claims that the "principal" conspiracy relates to two subject matters: (1) patents on automatic machinery for the production of pressed and blown glassware and glass containers; and (2) machinery for the production of pressed and blown glassware and glass containers, and the distribution of such machinery; and that such principal conspiracy, as alleged in Paragraph 35, was entered into by the parties referred to in such paragraph.

The "incidental" conspiracies referred to in Paragraph 36 of the complaint and the time of the formation of each such conspiracy are as follows:

(1) The conspiracy with respect to the manufacture and distribution of pressed and blown glassware and particularly heat-resisting glassware coincided with the principal conspiracy and was formed prior to or on or about October 6, 1922.

(2) The conspiracy with regard to the manufacture and distribution of all kinds of glass containers was formed in part at the time of the principal conspiracy, prior to or on or about October 6, 1922, and was expanded on April 9, 1924.

[fol. 161] (3) The conspiracy with regard to the manufacture and distribution of milk bottles was subsidiary to and a part of the conspiracy with regard to all kinds of

glass containers; but the plaintiff claims that such conspiracy was more fully developed on or about April 13, 1928 when defendants Hartford and Thatcher entered into the agreement referred to in Paragraph 133 of the complaint.

(4) The conspiracy with regard to the manufacture and distribution of fruit jars was subsidiary to and a part of the conspiracy with regard to all kinds of glass containers; but the plaintiff claims that such conspiracy was more fully developed on or about March 25, 1933.

The date when each corporate defendant joined the principal and incidental conspiracies is as follows:

Hartford—prior to or on or about October 6, 1922, through its predecessor, Hartford-Fairmont.
Corning—prior to or on or about October 6, 1922.
Empire Machine—prior to or on or about October 6, 1922.
Owens—on or about April 9, 1924.
Hazel-Atlas—on or about July 1, 1932.
Thatcher—prior to or on or about October 6, 1922.
Lynch—on or about August 23, 1933.
Ball Brothers—on or about March 25, 1933.
Anchor Hocking—on or about January 7, 1924, through its predecessor, Hocking Glass Company.
Liberty—on or about May 25, 1926.
The Stevenson Corporation—in or about March, 1928.
Glass Container Association—in or about March, 1928.

Defendant Charles R. Stevenson joined the principal and incidental conspiracies in or about March, 1928, and defendant Emory G. Ackerman joined the principal and incidental conspiracies on or about September 10, 1929.

Each of the other individual defendants joined the principal and incidental conspiracies either at the time they each became officers or directors of the respective corporate defendants herein, or on the date when the respective corporate defendants joined the said conspiracies, whichever was earlier.

4. Plaintiff claims that the conflicting patents and patent applications acquired by defendants Hartford and Owens (presently known to plaintiff), intended by the allegations [fol. 162] of Paragraph 72 of the complaint, the dates of

the respective acquisitions and the names of the respective vendors, were:

Patent Number	*Inventor*	*Date of Acquisition*	*Vendor*
1,217,102	O'Neill	1933	O'Neill Suction Machine Company
1,231,188	O'Neill	1933	O'Neill Suction Machine Company
1,231,610	Howard	1921	Howard
1,315,008	Howard	1921	Howard
1,315,983	O'Neill	1933	O'Neill Suction Machine Company
1,343,183	Sears	1925	Unknown to plaintiff
1,365,541	Rankin	1928	Pratt
1,388,654	Lobb	1925	Unknown to plaintiff
1,413,183	O'Neill	1933	O'Neill Suction Machine Company
1,413,757	Miller	1925	Miller Glass Engineering Company
1,451,707	Miller	1925	Miller Glass Engineering Company
1,462,491	Miller	1925	Miller Glass Engineering Company
1,462,652	O'Neill	1933	O'Neill Suction Machine Company
1,490,182	O'Neill	1933	O'Neill Suction Machine Company
1,512,566	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,516,220	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,518,109	Rankin	1928	Pratt
1,519,885	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,532,254	Miller (4-7-25)	1925	Miller Glass Engineering Company
1,534,996	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,537,961	O'Neill	1933	O'Neill Suction Machine Company
1,537,962	O'Neill	1933	O'Neill Suction Machine Company
1,537,963	O'Neill	1933	O'Neill Suction Machine Company
1,540,804	Miller (6-9-25)	1925	Miller Glass Engineering Company
1,544,987	Howard	1921	Howard
1,549,206	Miller (7-11-25)	1925	Miller Glass Engineering Company
1,551,526	O'Neill	1933	O'Neill Suction Machine Company
1,599,790	Rankin	1928	Pratt
1,600,361	Rankin	1928	Pratt
1,602,926	O'Neill	1933	O'Neill Suction Machine Company
1,604,000	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,606,967	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,611,362	O'Neill	1933	O'Neill Suction Machine Company
1,611,363	O'Neill	1933	O'Neill Suction Machine Company

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1,621,426	Miller	1925	Miller Glass Engineering Company
1,631,061	Rankin	1928	Pratt
1,642,660	O'Neill	1933	O'Neill Suction Machine Company
1,642,966	Miller	1925	Miller Glass Engineering Company
1,642,967	Miller	1925	Miller Glass Engineering Company
1,642,968	Miller	1925	Miller Glass Engineering Company
1,654,710	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,658,735	O'Neill	1933	O'Neill Suction Machine Company
1,681,127	Miller	1933	Ed Miller Machine and Mold Company
1,684,064	Miller	1933	Ed Miller Machine and Mold Company
1,697,996	Nagle	1937	Nagle

Patent Number	Inventor	Date of Acquisition	Vendor
1,708,087	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,708,089	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,717,808	Miller	1963	Ed Miller Machine and Mold Company
1,733,479	Miller	1963	Ed Miller Machine and Mold Company
(Reissues 17,761 and 18,581)			
1,733,480	Miller	1963	Ed Miller Machine and Mold Company
1,748,463	Rankin	1963	Pratt
1,756,109	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,758,085	O'Neill	1963	O'Neill Suction Machine Company
1,760,960	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,773,530	Miller	1963	Ed Miller Machine and Mold Company
1,808,082	Nagle	1937	Nagle
1,838,874	Miller	1963	Ed Miller Machine and Mold Company
1,864,275	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,864,276	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,864,277	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,864,278	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,864,279	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,879,420	Nagle, et al.	1937	Nagle
1,906,086	O'Neill	1963	O'Neill Suction Machine Company
1,906,906	Tucker, et al.	1925	Tucker, Reeves and Beatty
1,948,218	Headley, et al.	1963	Whitall-Tatum Company
1,948,219	Headley, et al.	1963	Whitall-Tatum Company

[fol. 164] The other means by which defendants Hartford and Owens carried out the campaign alleged in Paragraph 72 are more particularly set forth in the following paragraphs of the complaint: 80, 81, 82, 87, 91, 94, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 126, 127, 128, 132, 133, 137, 138, 143, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 165, 166, 167, 168, 173, 174, 181, 182, 183, 184, 185, 186, 187, 201, 202, 203.

5. The existing Nivison-Weiskopf licensees, presently known to plaintiff, who were either eliminated from competition or became licensees of defendant Hartford, as alleged in Paragraph 81 of the complaint, were the W. T. Rawleigh Glass Company.

6. (a) The additional suits brought by Owens, as alleged in Paragraph 90 of the complaint, are presently unknown to the plaintiff and are unquestionably within the knowledge and a part of the records of defendant Owens.

(b) The miscellaneous acquisitions by defendants Hartford and Owens, presently known to the plaintiff, in addi-

tion to those already listed under item 4 above, together with the respective dates thereof, the names of the vendors, and the nature of the property transferred, were as follows:

Universal Glass Products Co.—September 15, 1932—5 Miller and 1 Knox-O'Neill air displacement feeders.

Lamb Glass Co.—November 10, 1932—8 Miller and 1 Stuckey feeders.

Latchford Glass Co.—December 7, 1932—5 Bethel feeders, and patents and applications.

Knox Glass Bottle Co.—1932—Kucera and Miller feeders.

Nivison-Weiskopf Glass Co.—1932—Nivison-Weiskopf feeders.

Maywood Glass Co.—December 16, 1932—2 Bethel (Maywood) feeders.

Diamond Glass Co.—March 27, 1933, 2 Miller and 5 O'Neill feeders.

Sterling Glass Co.—July 7, 1933—3 Miller and 1 Meyer feeders, and patents and applications.

Northwestern Glass Company—August 1, 1933—2 O'Neill and 1 Meyer feeders.

[fol. 165] Brockway Glass Co.—September 12, 1933—4 Miller and 10 Harding feeders.

Phoenix Glass Co.—September 12, 1933—(Same as Brockway.)

Knape-Coleman Company—1934—Miller machines.

Fairmount Glass Works, Inc.—April 30, 1934—15 Rau and 1 Shawkee feeders.

Three Rivers Glass Co. (by Ball Bros.)—1936—Tremblay Feeders, and patents.

Tygart Valley Glass Co.—February 18, 1936—13 Tygart feeders, and Stewart and Noble patents.

7. Other paragraphs in which plaintiff claims other acts on the part of the moving defendants under the general allegations of Paragraph 122 are as follows: 34, 36, 37, 38, 88, 89, 91, 127, 181, 200, 201, 202, 203, 219, 225, 230.

8. Other paragraphs wherein plaintiff claims other acts on the part of the moving defendants in furtherance of the conspiracy alleged in paragraphs 128 to 142 inclusive and in addition thereto are as follows: 34, 36, 37, 38, 92, 93, 167, 171, 173, 174, 175, 176, 177, 179, 180, 181, 206, 207, 211, 217, 218, 227, 228, 230.

9. Other paragraphs wherein plaintiff claims other acts on the part of the moving defendants in furtherance of the conspiracy alleged in Paragraphs 143 to 164 inclusive and in addition thereto are as follows: 34, 36, 37, 38, 92, 93, 171, 173, 174, 175, 176, 177, 178, 179, 180, 181, 206, 207, 211, 217, 218, 227, 229, 230.

10. Plaintiff claims that the policy referred to in paragraph 205 of the complaint was formulated by defendants Hartford and Owens jointly and carried out by said defendants jointly and severally and as a result in part of: (1) each and every written agreement entered into by and between defendants Hartford and Owens; (2) each and every written agreement entered into by and between defendant Hartford and any other defendant herein (excluding defendant Owens); (3) each and every written agreement entered into by and between defendant Owens and any [fol. 166] other defendant herein (excluding defendant Hartford); (4) each and every written license agreement entered into by defendant Hartford, with any person, relating to the use of machinery for the production of glass containers; (5) each and every written license agreement entered into by every other defendant herein, with any person, relating to the use of machinery for the production of glass containers.

11. The agreements referred to in paragraph 206 of the complaint (in addition to those listed in paragraphs 126, 127 and 212 to 216 inclusive) are those contracts, agreements, arrangements and understandings set forth in the paragraphs listed under item 2 above.

Emerich B. Freed, United States Attorney. (Signed) John Paul Manton, Asst. U. S. Attorney.

Dated at Washington, D. C., on February 10, 1940.

Samuel S. Isseks, Ernest S. Meyers, Special Assistant to the Attorney General. John W. Porter, Special Attorney.

[fol. 167] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

BILL OF PARTICULARS IN RESPONSE TO MOTION OF DEFENDANTS ANCHOR HOCKING GLASS CORPORATION, ET AL.—Filed February 13, 1940

The government voluntarily files the following bill of particulars in response to a motion of defendants, Anchor Hocking Glass Corporation, Isaac J. Collins, J. D. Dilworth, W. V. Fisher, T. C. Fulton, Herman Krannert, V. E. Macy, Jr., J. K. Moffett, Ernest Stauffen, Jr., L. B. Williams, J. O. Deegan, B. E. Fector, C. D. King, H. J. Carr, H. C. Laughlin, H. J. Hamlin and F. B. Schlub, to make the complaint more definite and for a bill of particulars. The numbering in this bill of particulars follows that used in the said defendants' motion.

I. a. None.

b. Plaintiff claims that defendant Isaac J. Collins as a large stockholder in Illinois Glass Company and as president of three companies (Hocking Glass Company, General Glass Company, and Anchor Hocking Glass Corporation) in which defendants William E. Levis and R. H. Levis were financially interested, is financially connected with said [fol. 168] defendants Levis.

c. Plaintiff claims that defendant Isaac J. Collins became a member of the Levis group by acquiring stock in the Illinois Glass Company. The date of the acquisition of this stock by said defendant and the period during which he owned such stock is presently unknown to plaintiff and is unquestionably within the knowledge and a part of the records either of defendant Collins or of defendant Anchor Hocking, or both.

d. J. P. Levis, J. M. Levis, E. M. Ashcraft, A. W. Sherwood, F. T. Nesbitt, C. B. Belknap, A. C. Levis, Charles Levis, C. P. Levis, Nelson Levis, Thomas M. Levis, Garland Lufkin, Mrs. Jessie M. Levis, Mrs. Margaret H. Levis, Mrs. B. H. Crawford McNash, Mrs. Adele Levis Rand, Mrs. Mary Levis Dyas.

II. a. The alleged agreement was oral.

b. Plaintiff claims that defendant Anchor Hocking made such agreement with defendants Corning, Hartford and Owens.

c. Plaintiff claims that C. B. Belknap represented defendants Corning, Hartford and Owens, and that defendant Isaac J. Collins represented Anchor Hocking.

d. Plaintiff claims that the alleged agreement was made between November 20 and December 6, 1937, the exact date and place thereof being presently unknown to plaintiff.

III. a. & b. Plaintiff has no knowledge with respect to the matter here specified other than what it has alleged in paragraph 165 of the complaint. This is unquestionably a [fol. 169] matter of record with defendants Anchor Hocking and Isaac J. Collins.

c. Plaintiff has not alleged and does not know whether such substantial block of stock at any time constituted a "controlling" interest in Hocking Glass Company.

IV. a. Plaintiff claims that defendants Owens and Hartford were in constant communication with respect to the reorganization of Turner and the organization of General and that defendant Owens, through its officers, brought together the bondholders of Turner and the financial interests in control of Hocking and defendant Thatcher. The plan effected was approved by defendants Owens and Hartford and was made possible by defendant Thatcher's acquisition of one-half the stock of General.

b. Plaintiff does so claim with respect both to the allegations of paragraphs 36 and to those of paragraph 38. The reorganization of Turner effected the elimination of an independent producer of glassware, and the formation of General substituted a company which was dominated and controlled by Hocking and defendant Thatcher. The result was to group even more closely the handful of companies which, through defendant Hartford, govern the industry.

V. a. The alleged agreement, so far as plaintiff now knows, was oral and is evidenced in part by an agreement dated September 16, 1932, and a stipulation dated November 23, 1932, both between General Glass Company and defendant Hartford, such stipulation being filed in the United States District Court of Ohio in the case of *Hartford-Empire Company* v. *The Nivison-Weiskopf Company.*

b. The exact time when and the place where said agreement was entered into are unknown to plaintiff, except [fol. 170] that the original understanding was reached sometime shortly prior to August 20, 1931, in the City of Cincinnati, Ohio.

c. The identity of the person or persons present at Cincinnati, Ohio, on behalf of defendant Hartford is unknown to plaintiff. The representatives of General were defendants Isaac J. Collins and H. C. Mandeville. The plaintiff does not know who represented Hartford and General at subsequent conferences in connection with such agreement, except that the agreement of September 16, 1932, and the stipulation of November 23, 1932, referred to in sub-paragraph a. above, were executed by defendant F. Goodwin Smith as president of defendant Hartford and defendant Isaac J. Collins as president of General.

VI. a. Defendants Owens and Hartford were in frequent communication with regard to the consolidation of Hocking Glass Company with Anchor Cap Company; and Hartford and Owens were instrumental in bringing the executive heads of such two companies together, and in arranging, through the Levis group, for substantial assistance in the financing of the consolidation.

b. As the third largest producer of glass containers in the United States, Anchor Hocking was a most important addition to the roll of Hartford's licensees and to the group of dominant producers of glass containers. For allegations setting forth more particularly acts and practices in this respect see paragraphs 51, 87, 171 to 176 inclusive, 179, 180, 188, 200 to 207 inclusive, 210 to 217 inclusive, 218, 219, 226, 227 to 230 inclusive.

[fol. 171] c. Plaintiff claims that defendant Anchor Hocking joined the conspiracy, monopoly and combination in restraint of trade by acting upon the counsel and encouragement of the other conspirators herein, by accepting financial and other assistance from the Levis group and by agreeing to continue under the license agreement between Hocking and defendant Hartford with the usual restrictions, limitations and exclusions; and more particularly by participating in or encouraging the acts and practices alleged in the paragraph listed under VI. b. above.

(Signed Emerich B. Freed, United States Attorney.
(Signed) John Paul Manton, Asst. U. S. Attorney.

Dated at Washington, D. C., February 9, 1940.

(Signed) Samuel S. Isseks, Ernest S. Meyers, Special Assistants to the Attorney General. (Signed) John W. Porter, Special Attorney.

[fol. 172] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

BILL OF PARTICULARS IN RESPONSE TO MOTION OF DEFENDANTS LYNCH CORPORATION, ET AL.—Filed February 13, 1940

The government voluntarily files the following bill of particulars in response to a motion of defendants Lynch Corporation, Thomas Chandler Werbe, E. G. Bridges, A. G. Doll, J. L. Watts, Uz McMurtrie and N. W. McCullough, to make the complaint more definite and for a bill of particulars. The numbering in this bill of particulars follows that used in the said defendants' motion.

1. (a) Plaintiff claims that defendants Hartford and Lynch by means of agreements, contracts, understandings and arrangements, written and oral, now in force, "at the present time control and dominate the manufacture of forming machines."

(b) Plaintiff claims that defendants Hartford and Lynch jointly control and dominate the manufacture of forming machines at the present time by virtue of the written agreement between them dated August 23, 1933, and by virtue of an oral understanding which is alleged in paragraph 116 of the complaint and by virtue of contracts, agreements, understandings, suits, threats of suit, acquisitions, proceedings, and negotiations to which Hartford has been or is a [fol. 173] party or privy by which such control and domination were acquired and are maintained, as is more particularly alleged in the paragraphs of the complaint set forth in: 41, 42, 43, 44, 45, 55, 56, 60, 61, 62, 63, 67, 68, 69, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 92, 93,

94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 107, 110, 111, 113, 114, 115, 116, 117, 119, 120, 122, 123, 124, 126, 127, 128, 131, 132, 133, 137, 138, 139, 140, 143, 144, 147, 149, 150, 151, 154, 155, 156, 168, 201, 202, 203.

(c) The paragraphs of the complaint to which the words "in the manner hereinafter alleged" refer in respect to (1) the "forming and carrying out the combination and conspiracy," and (2) "restraining trade and commerce," are the paragraphs set forth in sub-paragraphs (b) above.

2. By the allegation "defendants Owens and Hartford . . . induced defendant Lynch to join the combination and conspiracy, etc." in paragraph 111 of the complaint, plaintiff claims that defendant Lynch joined the "principal" conspiracies and the other unlawful conspiracies referred to in paragraphs 35 and 36 of the complaint.

3. Plaintiff claims in addition to the acts set out in paragraph 120 of the complaint, the acts in the paragraphs set forth in sub-paragraph (b) of item 1 above.

Emerich B. Freed, United States Attorney.
(Signed) John Paul Manton, Asst. U. S. Attorney.

Dated at Washington, D. C., on February 10, 1940.

Samuel S. Isseks, Ernest S. Meyers, Special Assistants to the Attorney General.

John W. Porter, Special Attorney.

[fol. 174] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

BILL OF PARTICULARS IN RESPONSE TO MOTION OF DEFENDANTS CORNING GLASS WORKS, ET AL.—Filed February 13, 1940

The Government voluntarily files the following bill of particulars in response to a motion of defendants Corning Glass Works, Empire Machine Company, Alexander D. Falck, Alanson B. Houghton, Amory Houghton, Arthur A.

Houghton, Jr., Eugene C. Sullivan, William H. Curtiss, George D. Macbeth, Glen W. Cole, P. W. Jenkins, J. L. Peden, W. C. Decker, George B. Hollister and Arthur L. Day to make the complaint more definite and for a bill of particulars. The numbering in this bill of particulars follows that used in the said defendants' motion.

I. (a) Plaintiff claims that the "conspiracy" alleged in Paragraph 35 of the complaint was reduced to writing on or about October 6, 1922, but was entered into prior thereto and probably as early as June 30, 1916 (the exact date being unknown to plaintiff) by virtue of agreements, understandings, or arrangements between and among Hartford-Fairmont Company (the predecessor of defendant Hart-[fol. 175] ford) and, among others, defendants Empire Machine, Corning, Falck and Houghton.

(b) The names of the "others" alleged to have conspired with the defendants named in Paragraph 35 of the complaint are: J. D. Dilworth, F. Goodwin Smith, Arthur L. Day, Beech-Nut Packing Company, Monongah Glass Company, Herbert Knox Smith, Arthur A. Houghton, H. L. Heintzelman, R. T. Cunningham, William A. Lorenz, Edward H. Lorenz, Ernest Walker Smith, Reginald Halliday, H. D. Gibson, Thomas W. Russell, Joseph Merritt, James W. Green, Vernon M. Dorsey, William Sinclaire and C. E. Githler.

(c) Plaintiff does not know whether the moving defendants entered into written or oral agreements on or about October 6, 1922, in addition to "Agreement for Formation of Hartford Empire Company" referred to in Paragraph 42 of the complaint and "Agreement Relating to Patent Rights and Formulas" referred to in Paragraph 43 of the complaint.

(d) Plaintiff claims that an agreement, arrangement, or understanding was made to do the things so alleged to be "also contemplated";

(1) Plaintiff claims that in so far as such agreement, arrangement or understanding was not set forth in the written agreements of October 6, 1922, alleged in Paragraphs 42 and 43 of the complaint, they were both oral and in writing, and the substance thereof is more fully set forth in the succeeding paragraphs of the complaint and

more specifically in the paragraphs listed in sub-division 2 of this item;

(2) Plaintiff claims that agreements and acts alleged in the subsequent paragraphs of the complaint were "contemplated"; and such agreements and acts are alleged in the following paragraphs of the complaint: 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 55, 56, 58, 59, 60, 61, 62, 63, 64, 65, [fol. 176] 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 119, 120, 122, 123, 124, 126, 127, 128, 130, 131, 132, 133, 134, 135, 137, 138, 139, 140, 141, 143, 144, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 165, 166, 167, 168, 169, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 225, 226, 227, 228, 229, 230.

(c) Plaintiff claims that the conspiracies other than the "principal conspiracy" referred to in Paragraph 36 of the complaint and the time of the formation of each such conspiracy are as follows:

(1) The conspiracy with respect to the manufacture and distribution of pressed and blown glassware and particularly heat resisting glassware coincided with the principal conspiracy and was formed prior to or on or about October 6, 1922.

(2) The conspiracy with regard to the manufacture and distribution of all kinds of glass containers was formed in part at the time of the principal conspiracy prior to or on or about October 6, 1922, and was expanded on April 9, 1924.

(3) The conspiracy with regard to the manufacture and distribution of milk bottles was subsidiary to and a part of the conspiracy with regard to all kinds of glass containers; but the plaintiff claims that such conspiracy was more fully developed on or about April 13, 1928, when defendants Hartford and Thatcher entered into the agreement referred to in Paragraph 133 of the complaint.

[fol. 177] (4) The conspiracy with regard to the manufacture and distribution of fruit jars was subsidiary to and a

part of the conspiracy with regard to all kinds of glass containers; but the plaintiff claims that such conspiracy was more fully developed on or about March 25, 1933.

Defendants Corning, Empire-Machine, Alexander D. Falck and Alanson B. Houghton joined the said conspiracy prior to, on or about October 6, 1922, the exact date being unknown to the plaintiff.

II. (a) (b) (c) Plaintiff claims that each of the other individual moving defendants listed in this item joined the principal conspiracy, and the incidental conspiracies set forth in subparagraph (e) of item I above, either at the time they each became officers, directors or employees of the moving corporate defendants or on the date when said corporate defendants joined the said conspiracies, whichever was earlier, and by virtue of the same.

III. (1) (a) (b) (c) (d) (e) (f) (g) Plaintiff claims that by virtue of its beneficial ownership of 40% of the stock of defendant Hartford and its substantial representation upon said defendant's Board of Directors as alleged in Paragraph 6 of the complaint, and by virtue of its agreements with defendant Hartford referred to in Paragraphs 42 and 43 of the complaint, defendant Corning was party and privy to each of the acts of industrial espionage, "blocking off" and "fencing in" of patents of competitors, discouragement and prevention of new machine developments, oppression and harassment through litigation and threats of litigation, and discouragement, harassment and oppression of competition in the manufacture of glass-making machinery, all as fully and more specifically alleged in the following paragraphs of the complaint: 48, 49, 50, 51, 56, 59, 60, 61, 62, 63, 65, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, [fol. 178] 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 106, 107, 109, 110, 111, 112, 113, 114, 115, 116, 117, 119, 120, 122, 123, 124, 126, 127, 128, 130, 131, 132, 133, 135, 137, 138, 139, 140, 141, 143, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 158, 159, 160, 161, 166, 167, 168, 169, 174, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 225, 226, 227, 228, 229.

(2) Plaintiff has no knowledge with respect to the matter here specified other than what it has alleged in Paragraph 187 of the complaint.

Emerich B. Freed, United States Attorney. (Signed) John Paul Manton, Asst. U. S. Attorney.

Dated at Washington, D. C., on February 10, 1940.

Samuel S. Isseks, Ernest S. Meyers, Special Assistants to the Attorney General. John W. Porter, Special Attorney.

[fol. 179] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THATCHER MANUFACTURING COMPANY ET AL.—Filed February 2, 1940

The defendants, Thatcher Manufacturing Company, H. C. Mandeville, R. W. Niver, E. F. Wellinghoff, C. G. Decker, F. H. Mills, S. G. H. Turner, Jervis Langdon, W. H. Mandeville, C. K. Hevener, F. W. Swan and Stanton Griffis, by their attorneys, answer the complaint herein, as follows:

[fol. 180] 1. Answering paragraph one, the above named answering defendants admit that by said bill of complaint and these proceedings, plaintiff seeks to invoke the provisions of Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," said act being commonly known as the "Sherman Antitrust Act," and Section 15 of the Act of Congress, October 15, 1914, c. 323, 39 Stat. 730, as amended, said act being commonly known as the "Clayton Act," against the defendants named in said bill of complaint to prevent acts alleged by plaintiff to be violations of Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act, but these said answering defendants deny that they, or any of them, have done, or threaten to do,

any act or thing in violation of the said acts and statutes, or any of them, and, as to the other defendants named in said bill of complaint, these answering defendants say that they are without knowledge sufficient to form a belief, as to the truth of the averments contained in said paragraph 1, not herein admitted or denied.

2. Answering paragraph two the said answering defendants admit that certain of the defendants herein are found within the Western Division of the Northern District of Ohio, and carry on business therein, and that interstate trade and commerce involved in the glass industry are carried on within such district and division, but the said answering defendants deny that they, or any of them, have done, or threaten to do, any unlawful acts or violations, and deny each and every other averment in said paragraph contained.

[fol. 181] 3. Answering paragraphs 3, 4, 5 and 6 they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

4. Answering paragraph 7 they deny knowledge or information sufficient to form a belief as to the truth of the averments thereof, except that on information and belief they admit that defendant Owens (with its subsidiaries) is the second largest manufacturer and distributor of glass milk bottles in the United States.

5. Answering paragraph 8 they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

6. Answering paragraph 9 they admit the averments therein contained.

7. Answering paragraphs 10 and 11 they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

8. Answering paragraph 12 they admit that prior to 1938 Illinois Glass Company owned shares of stock in Thatcher Manufacturing Company which thereafter were distributed to certain stockholders of Illinois Glass Company, including the defendants William E. Levis, R. H. Levis, Harold Boeschenstein, Isaac J. Collins and J. Harrison McNash, but they deny that the Levis Group has been

actively interested in the management of the defendant Thatcher Manufacturing Company, or has been directly or indirectly represented on the board of directors of defendant Thatcher Manufacturing Company, or is now directly or indirectly represented on the said board of directors, and deny knowledge or information sufficient to form a belief as to the truth of the other averments in said paragraph contained.

[fol. 182] 9. Answering paragraphs 13 and 14 they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

10. Answering paragraph 15 they admit, on information and belief, the averments of said paragraph except that they deny information or knowledge sufficient to form a belief as to the truth of the averment that said association includes among its members, all but two of the glass container manufacturers in the United States.

11. Answering paragraph 16 they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained except that they admit that Charles R. Stevenson and Emory G. Ackerman have supervised and conducted, and now supervise and conduct, the affairs of defendant Glass Container Association of America, Inc.

12. Answering paragraphs 17, 18, 19, 20 and 21 they deny knowledge or information sufficient to form a belief as to the truth of the averments contained in said paragraphs.

13. Answering paragraph 22 they admit that the individual defendants named therein as the officers or directors of defendant Thatcher Manufacturing Company have been such officers or directors and have participated and participate in the direction and management of defendant Thatcher Manufacturing Company, and have approved, authorized, ordered and done some or all of the acts alleged in the complaint to have been performed by defendant Thatcher Manufacturing Company; they deny that they, or any of them, have so approved, authorized, ordered and done, except as an officer or director of defendant Thatcher [fol. 183] Manufacturing Company, and they further deny that any such acts were in violation of any one or more

of the Antitrust Laws of the United States, or were otherwise unlawful.

14. Answering paragraphs 23, 24, 25 and 26 they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

15. Answering paragraph 27 they admit, on information and belief, the averments thereof, except that they deny the averment therein contained, that the defendant Glass Container Association of America, Inc., is engaged in trade and commerce between and among the several states of the United States.

16. Answering paragraphs 28 and 29 they admit, on information and belief, the averments therein contained.

17. Answering paragraphs 30, 31 and 32 they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

18. Answering paragraph 33 they deny knowledge or information sufficient to form a belief as to the truth of the averments contained in said paragraph, except that the answering defendants admit that they are familiar, in a general way, with the prevalent commercial processes for manufacturing glass containers and that the description of said processes of manufacture contained in said paragraph is substantially correct.

19. Answering paragraph 34 of these said answering defendants deny each and every averment therein contained in so far as it in any way relates to or affects these answering defendants, and they deny knowledge or information sufficient to form a belief as to the truth of any of the averments in said paragraph so far as they may apply to other defendants.

[fol. 184] 20. Answering paragraph 35 they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

21. Answering paragraphs 36, 37 and 38 they deny each averment therein contained so far as it in any manner relates to or affects these answering defendants, and they deny information or knowledge sufficient to form a belief as to the truth of the averments therein contained so far as they affect other defendants.

22. Answering paragraphs 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51 and 52, they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

23. Answering paragraph 53 they admit that the defendant Thatcher Manufacturing Company received a license for the manufacture of milk bottles on the Owens machine and they deny knowledge or information sufficient to form a belief as to the truth of the other averments therein contained.

24. Answering paragraphs 54, 55, 56, 57, 58 and 59 they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

25. Answering paragraphs 60, 61, 62, 63, 64 and 65 they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained, except that they admit that in December, 1938, at the time of the hearings before the Temporary National Economic Committee therein mentioned, testimony concerning said matters was produced and made public.

26. Answering paragraphs 66, 67, 68, 69 and 70 they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

[fol. 185] 27. Answering paragraphs 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, and 88, they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

28. Answering paragraph 89 they admit the averments therein contained.

29. Answering paragraphs 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105 and 106 they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained, except that they admit that in December, 1938, at the time of the hearings before the Temporary National Economic Committee therein mentioned, testimony concerning said matters was produced and made public.

30. Answering paragraphs 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122 and 123

they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

31. Answering paragraph 124 they admit the averments contained therein.

32. Answering paragraphs 125, 126 and 127 they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

33. Answering paragraph 128 they deny the averments therein contained so far as they in any manner relate to or affect defendant Thatcher Manufacturing Company and they deny knowledge or information sufficient to form a belief as to the truth of said averments as the same apply to other defendant or defendants.

34. Answering paragraph 129 they admit the averments contained therein.

[fol. 186] 35. Answering paragraph 130 they deny the averments thereof as to Thatcher acquiring the stock of Essex Glass Company, Travis Glass Company and Lockport Glass Company, and admit the other averments therein contained.

36. Answering paragraph 131 they admit the averments therein contained.

37. Answering paragraphs 132 and 133 they admit the averments contained therein.

38. Answering paragraph 134 they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

39. Aswering paragraph 135 they admit that in December, 1932, Thatcher acquired the milk bottle business and certain machinery and license rights of Knox Glass Bottle Company, and paid therefor the amount set forth in said paragraph, and they deny having knowledge or information sufficient to form a belief as to the truth of the other averments in said paragraph.

40. Answering paragraph 136 they admit the averments contained therein.

41. Answering paragraph 137 they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

42. Answering paragraph 138 they admit the averments therein contained.

43. Answering paragraphs 139, 140 and 141 they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

44. Answering paragraph 142 they deny the averments therein contained so far as they relate to or affect these answering defendants, and deny knowledge or information [fol. 187] sufficient to form a belief as to the truth of the averments contained therein, so far as they relate to or affect other defendants.

45. Answering paragraphs 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163 and 164 they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained, except that they admit that in the year 1933 the General Glass Company, mentioned in paragraph 154, disposed of its license to manufacture fruit jars, and General Glass Company received $100,000.00 therefor.

46. Answering paragraph 165 they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained, except they admit that prior to 1931, the Illinois Glass Company owned shares of stock in defendant Thatcher Manufacturing Company.

47. Answering paragraph 166 they admit, on information and belief, the averments contained therein.

48. Answering paragraph 167 they admit that in 1931 Hocking Glass Company and Thatcher Manufacturing Company arranged for the organization of General Glass Company to acquire the assets of Turner Glass Company and that one-half of the stock of General Glass Company was acquired by Hocking Glass Company and the other one-half by Thatcher Manufacturing Company, and that in 1935 Thatcher Manufacturing Company sold its interest in General Glass Company to Hocking Glass Company, and they deny knowledge or information sufficient to form a belief as to the truth of the other averments contained therein.

[fol. 188] 49. Answering paragraph 168 they admit, upon information and belief, that General Glass Company pur-

chased in 1932, the assets of the Nivison-Weiskopf Company for $150,000.00, but they deny knowledge or information sufficient to form a belief as to the truth of the other averments contained therein.

50. Answering paragraph 169 they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

51. Answering paragraph 170 the defendants admit the averments contained therein except that they deny information or knowledge sufficient to form a belief as to the truth of the averments therein contained to the effect that since 1928 said Glass Container Association has been managed through the defendant Stevenson Corporation.

52. Answering paragraph 171 they admit that the defendants therein named are members of said Glass Container Association and are actively interested in the work of said association but that they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

53. Answering paragraph 172 they admit, on information and belief, that prior to 1928 the activities of said Glass Container Association were limited to the collection and dissemination of statistical data, and the issuance of advertising matter regarding the use of glass, and they deny the other averments therein contained.

54. Answering paragraph 173 they deny each and every of the averments contained therein.

55. Answering paragraph 174 they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

[fol. 189] 56. Answering paragraph 175 they deny each and every of the averments contained therein.

57. Answering paragraph 176 they deny, on information and belief, each and every of the averments contained therein.

58. Answering paragraph 177 they deny the averments therein contained, so far as they relate to and affect defendant Thatcher Manufacturing Company, and deny knowledge or information sufficient to form a belief as to

the truth of the averments therein contained so far as they relate to and affect other defendants.

59. Answering paragraphs 178, 179 and 180 they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained; except that they admit the averment in paragraph 180 that defendant Thatcher is the recognized price leader in the industry for milk bottles.

60. Answering paragraphs 181, 182, 183, 184, 185, 186 and 187 they deny knowledge or information sufficient to form a belief as to the truth of the averments contained in said paragraphs.

61. Answering paragraph 188 they deny each and every of the averments therein contained so far as they relate to or affect defendant Thatcher Manufacturing Company, and deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph so far as they relate to or affect other defendants.

62. Answering paragraphs 189, 190, 191, 192 and 193 they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

[fol. 190] 63. Answering paragraph 194 they admit that Thatcher Manufacturing Company, for many years has had substantial earnings and that the figures set forth in the remainder of said paragraph are substantially correct.

64. Answering paragraphs, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 225 and 226, they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

65. Answering paragraph 227 they admit that based upon information published by the Glass Container Association, the averments contained in said paragraph as to percentages of glass containers manufactured and distributed are substantially correct, and deny knowledge or information sufficient to form a belief as to the truth of the other averments contained in said paragraph.

66. Answering paragraph 228 they admit, upon information published by the Glass Container Association, that the

averments as to the percentages of milk bottles produced in the United States by the defendants, Owens, Thatcher and Liberty Glass, as stated in said paragraph, are substantially correct, and deny knowledge or information sufficient to form a belief as to the truth of the other averments therein contained.

67. Answering paragraph 229 they deny knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

68. Answering paragraph 230 they deny each averment in said paragraph contained so far as they relate to or affect the answering defendants, and deny knowledge or [fol. 191] information sufficient to form a belief as to the truth of the averments as they relate to other defendants.

Wherefore the answering defendants pray that the complaint be dismissed as to them, with costs.

(Signed) Ralph Emery, Attorney for Thatcher Manufacturing Company, and said other answering Defendants. 1018 Nicholas Bldg., Toledo, Ohio. Mandeville, Waxman, Buck, Teeter & Harpending, Counsel for Thatcher Manufacturing Company, and said other answering Defendants.

[fol. 192] IN UNITED STATES DISTRICT COURT

ANSWER OF GLASS CONTAINER ASSOCIATION, ET AL.
Filed Feb. 3. 1940

The defendants Glass Container Association of America, Inc., Charles R. Stevenson and Emory G. Ackerman, by their attorneys, answer the Complaint herein as follows:

First: Answering Paragraphs "1", "3", "4", "5" and "6", inclusive, deny knowledge or information sufficient to form a belief as to each and every allegation contained in said paragraphs.

Second: Answering Paragraph "2", upon information and belief, deny the allegations contained in said paragraph, except that defendants, upon information and belief, admit that certain of the defendants conduct their business and are found within the said Division of said District and that the interstate trade and commerce involved in the glass industry is carried on in part within such District and Division.

Third: Answering Paragraph "7", deny knowledge or information sufficient to form a belief as to the allegations contained in said paragraph, except that defendants admit, upon the basis of information submitted to the defendant Glass Container Association of America, Inc. by various members of the glass container industry, that the defendant Owens (with its subsidiaries) is the largest glass container manufacturer and distributor in the United States and is the second largest manufacturer and distributor of glass milk bottles in the United States.

Fourth: Answering Paragraph "8", deny knowledge or information sufficient to form a belief as to the allegations contained in said paragraph, except that defendants admit, upon the basis of information submitted to defendant Glass Container Association of America, Inc. by the various members of the glass container industry, that the defendant Hazel-Atlas (with its subsidiaries) is the second largest glass container manufacturer and distributor in the United States.

Fifth: Answering Paragraph "9", deny knowledge or information sufficient to form a belief as to the allegations contained in said paragraph, except that defendants admit, upon the basis of information submitted to the defendant Glass Container Association of America, Inc. by the various members of the glass container industry, that the defendant Thatcher (with its subsidiaries) is the largest manufacturer and distributor of glass milk bottles in the United States.

Sixth: Answering Paragraphs "10" and "11", deny knowledge or information sufficient to form a belief as to the allegations contained in said paragraphs, except that defendants admit, upon the basis of information submitted [fol. 193] to the defendant Glass Container Association of America, Inc. by the various members of the glass container industry, that the defendant Anchor-Hocking (with its subsidiaries) is the third largest manufacturer and distributor of glass containers in the United States.

Seventh: Answering Paragraphs "12" and "13", deny knowledge or information sufficient to form a belief as to the allegations contained in said paragraphs, except that defendants admit, upon the basis of information submitted to the defendant Glass Container Association of America,

Inc. by the various members of the glass container industry, that Liberty is the fourth largest manufacturer and distributor of glass milk bottles in the United States.

Eighth: Answering Paragraph "14", deny knowledge or information sufficient to form a belief as to the allegations contained in said paragraph, except that defendants aver on information and belief that the term "fruit jars" means generally wide mouth glass containers sold empty to the domestic or household trade for use in domestic canning or preserving of food, and admit, upon the basis of information submitted to the defendant Glass Container Association of America, Inc. by the various members of the glass container industry, that the defendant Ball Brothers (with its subsidiaries) is the largest manufacturer and distributor of fruit jars, as so defined, in the United States.

Ninth: As an answer to Paragraph "15", admit the allegations of said paragraph, except that upon information and belief defendants deny that all but two of the glass container manufacturers in the United States are members of the defendant Glass Container Association of America, Inc.

Tenth: Answering Paragraph "16", upon information and belief, deny the allegations contained in said paragraph, except that the defendants admit that the defendants Charles R. Stevenson and Emory G. Ackerman have held administrative offices in the defendant Glass Container Association of America, Inc. and, subject to the direction and control of its Board of Directors, of the duly authorized committees of such Board and of its President, have performed the usual duties pertaining thereto during the times set forth, as follows:

The defendant Emory G. Ackerman: Acting Assistant Business Manager and Assistant Business Manager: October 1929 to and including the time of filing this Answer.

The defendant Charles R. Stevenson: Business Manager from in and about March 1928 to and including the time of filing this Answer.

Eleventh: Answering Paragraphs "17" to "26", inclusive, deny knowledge or information sufficient to form a belief as to each and every allegation contained in said paragraphs.

Twelfth: Answering Paragraph "27", upon information and belief, deny that the defendant Glass Container Association of America, Inc. is engaged in trade and commerce among the several states of the United States; defendant Glass Container Association of America, Inc. denies knowledge or information sufficient to form a belief and defendants Stevenson and Ackerman deny that the Stevenson Corporation is engaged in such trade and commerce; and these answering defendants deny knowledge [fol. 194] or information sufficient to form a belief that the defendants Hartford-Empire and Empire Machine are engaged in trade and commerce as aforesaid:

Thirteenth: Answering Paragraph "28", admit that a portion of the glass machinery and the various kinds of glassware referred to in said paragraph, manufactured in various localities, were shipped and distributed through the channels of interstate trade and commerce, but, upon information and belief, deny that all of such products were so shipped, and aver that the remainder of said glass machinery and various kinds of glassware was shipped through intrastate channels of trade and commerce.

Fourteenth: Answering Paragraphs "29" to "32" inclusive, deny knowledge or information sufficient to form a belief as to each and every allegation contained in said paragraphs.

Fifteenth: Answering Paragraph "33", deny knowledge or information sufficient to form a belief as to the allegations contained in said paragraph, except that defendants Stevenson and Ackerman admit that they are familiar, in a general way, with some of the prevalent commercial methods for manufacturing glass containers and that the description of some of said methods of manufacture contained in said paragraph appears to be substantially correct, but deny knowledge or information sufficient to form a belief as to the alleged domination or control of any of said methods, or of any equipment necessary thereto, by any of the defendants.

Sixteenth: Answering Paragraphs "34" to "169" inclusive, deny knowledge or information sufficient to form a belief as to each and every allegation contained in said paragraphs, except that these answering defendants deny that they have conspired to attempt to monopolize, or to

monopolize, or to combine to restrain trade or commerce in any manner whatsever, or are now so doing, and deny that they have violated or are now violating in any manner whatsoever Sections 1 or 2 of the Sherman Act or Section 3 of the Clayton Act.

Seventeenth: Answering Paragraph "170", deny knowledge or information sufficient to form a belief as to the allegations contained in said paragraph, except that the defendants admit that the defendant Glass Container Association of America, Inc. was organized in 1919 as a trade association for the industry to promote the manufacture, sale and use of glass containers or allied articles; admit that the defendant Association was organized for the additional purposes, among others, of compiling technical information, publicising the industry, aiding in the improvement and quality of glass, and encouraging uniformity of legislation and governmental regulations affecting the glass industry; admit that during all or a part of the period from 1920 to 1928, one I. J. Jennings was employed by the Association; and admit that the defendants Charles R. Stevenson and Emory G. Ackerman have held administrative offices in the defendant Glass Container Association of America, Inc. and, subject to the direction and control of its Board of Directors, of the duly authorized Committees of such Board, and of its President, have performed the usual duties pertaining thereto during the times set forth, as follws:

The defendant Emory G. Ackerman: Acting Assistant Business Manager and Assistant Business Manager: October 1929 to and including the time of filing this Answer. [fol. 195] The Defendant Charles R. Stevenson:

Business Manager from in and about March 1928 to and including the time of filing this Answer.

Eighteenth: Answering Paragraph "171", admit the allegations contained in said paragraph, except that defendants deny that all but two of the glass container manufacturers in the United States are members of the Association and are actively interested in the work of the Association.

Nineteenth: Answering Paragraph "172", admit that prior to 1928 and thereafter the Association's activities

included the collection and dissemination of statistical data and the issuance of advertising matter regarding the use of glass containers, and deny the remaining allegations of said paragraph.

Twentieth: Answering Paragraph "173", deny each and every allegation contained therein and, without limiting the general denial hereinbefore set forth, specifically deny that the defendants Glass Container Association of America, Inc., Stevenson and Ackerman have been availed of, or have acted or are acting in the manner alleged in said paragraph or in any manner to fix, maintain and enforce artificial and non-competitive prices for various types of glass containers, or have been availed of, or have acted, or are acting in any manner to prevent the normal price changes which result from, and which at all times herein material have existed and are now existing in, a free and open competitive market for said containers.

Twenty-first: Answering Paragraphs "174" and "175", deny each and every allegation contained in said paragraphs.

Twenty-second: Answering Paragraphs "176" to "188" inclusive, deny knowledge or information sufficient to form a belief as to the allegations contained in the said paragraphs, except that these answering defendants deny that, by concerted or separate action, they have caused high prices in the glass container industry by any system of price leadership or otherwise.

Twenty-third: Answering Paragraph "189", admit, on the basis of the 1937 census figures available to the defendants, that the allegations contained in said paragraph with respect to the gross sales of glass containers and of pressed and blown glassware other than glass container ware appear to be substantially correct.

Twenty-fourth: Answering Paragraphs "190" to "218", inclusive, deny knowledge or information sufficient to form a belief as to each and every allegation contained in said paargraphs.

Twenty-fifth: Answering Paragraph "219", deny knowledge or information sufficient to form a belief as to the allegations contained in said paragraph, except that de-

fendants admit, upon the basis of information submitted to the defendant Glass Container Association of America, Inc. by various members of the glass container industry for the year 1937, that approximately 3.4% of the glass containers produced and distributed in the United States were made by the Obear-Nester Glass Company, F. E. Reed Glass Company and Alexander H. Kerr & Co.

[fols. 196-202] *Twenty-sixth:* Answering Paragraphs numbered "225" to "226", deny knowledge or information sufficient to form a belief as to each and every allegation contained in said paragraphs.

Twenty-seventh: Answering Paragraph numbered "227", deny knowledge or information sufficient to form a belief as to the allegations contained in said paragraph, except that defendants admit, upon the basis of information submitted to the defendant Glass Container Association of America, Inc. by the various members of the glass container industry for the year 1937, that Owens, Hazel-Atlas, Anchor-Hocking, Thatcher, and Ball Brothers manufactured and distributed approximately 69.55% of all glass containers (including milk bottles and fruit jars) produced in the United States; that Owens manufactured approximately 38.03%; Hazel-Atlas approximately 16.89%; Anchor-Hocking approximately 8.01%; Thatcher approximately 2.87% and Ball Brothers approximately 3.75%.

Twenty-eighth: Answering Paragraph numbered "228", deny knowledge or informatio nsufficient to form a belief as to the allegeations contained in said paragraph, except that defendants admit, upon the basis of information submitted to the defendant Glass Container Association of America, Inc. by the various members of the glass container industry for the year 1937, that Owens, Thatcher and Liberty manufactured and distributed approximately 77.82% of all the milk bottles produced in the United States; that Thatcher manufactured and distributed approximately 36.57% of said milk bottles; Owens approximately 35.08%; Liberty Glass approximately 6.17%; and that the remaining 22.18% of said milk bottles were produced by others.

Twenty-ninth: Answering Paragraph numbered "229", deny knowledge or information sufficient to form a belief as to the allegations contain in said paragraph, except that defendants admit, upon the basis of information submitted

to the defendant Glass Container Association of America, Inc. by the various members of the glass container industry for the year 1937, that Owens, Ball Brothers and Hazel-Atlas manufactured and distributed approximately 84.59% of all fruit jars (as defined in paragraph Eighth hereof) produced in the United States; that Ball Brothers manufactured and distributed approximately 56.73% of such fruit jars; Hazel-Atlas approximately 20.13%; Owens approximately 7.73%; and Alexander H. Kerr & Co. approximately 15.41%.

Thirtieth: Answering Paragraph "230", deny each and every allegation contained in said paragraph.

Wherefore, the defendants Glass Container Association, Inc., Charles R. Stevenson and Emory G. Ackerman pray that a decree be entered herein dismissing the Complaint, with costs to the defendants.

(Signed) Luther Day. (Signed) Jones, Day, Cockley and Reavis, 1759 Union Commerce Building, Cleveland, Ohio. Attorneys for Glass Container Association of America, Inc., Charles R. Stevenson, and Emory G. Ackerman.

[fol. 203] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF HAZEL-ATLAS GLASS COMPANY ET AL.—Filed February 5, 1940

Come now defendants Hazel-Atlas Glass Company (hereinafter termed Hazel-Atlas), J. Harrison McNash, Walter H. McClure, George S. Quay, A. L. Metzner, L. C. Paull, H. W. Gee, William W. Holloway, B. H. Seabright, J. Sumner Jones, and S. O. Laughlin, Jr., which and each one or more of them, severally as well as jointly, are hereinafter referred to as Answering Defendants, and for their answer, each answering upon information and belief as to all other Answering Defendants, they reserve all rights of exceptions to the complaint; they deny that Answering Defendants have created a monopoly, attempted to create a monopoly, restrained or attempted to restrain trade or commerce, or in any way violated the Sherman Antitrust Act, the Clayton

Act or any of the antitrust laws; and they further answer as follows:

1. They admit that the complaint purports to be filed and the proceedings herein purport to be instituted under Section 4 of the Sherman Antitrust Act and under Section 15 of the Clayton Act, as amended, to prevent alleged violations by defendants of Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act; they deny that Answering Defendants have violated or intend to violate the Sherman [fol. 204] and the Clayton Acts or either of them; and they are without knowledge or information sufficient to form a belief as to whether or not any one or more of the other defendants have violated or attempted to violate either or both of said Acts.

2. They admit that some of the defendants conduct their business and are found within the Western Division of the Northern District of Ohio, and that interstate trade and commerce involved in the glass industry are carried on in part within such District and Division; they deny each other averment in paragraph 2 of the complaint in so far as it in any way relates to or affects Answering Defendants; and they are without knowledge or information sufficient to form a belief as to the truth of any of said other averments in so far as they may apply to other defendants.

3. Upon information and belief, they admit that defendant Hartford-Empire Company is a corporation, organized in 1922, and existing under the laws of the State of Delaware, with its principal office at Hartford, Connecticut, that said defendant succeeded to the assets of its predecessor the Hartford-Fairmont Company, and that said defendant owns patents and is engaged in the acquisition and development of patents relating to machinery for the manufacture of glassware and the leasing and licensing of such machinery; and they are without knowledge or information sufficient to form a belief as to the truth of any other averment in paragraph 3 of the complaint.

4, 5, 6. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraphs 4, 5 and 6 of the complaint.

7. Upon information and belief, they admit the allegations in paragraph 7 of the complaint, except that they are

without knowledge or information sufficient to form a belief [fol. 205] as to the truth of the averment that Owens (with its subsidiaries) is the second largest manufacturer and distributor of glass milk bottles in the United States.

8. They admit the allegations in paragraph 8 of the complaint.

9, 10, 11. They are without knowledge or information sufficient to form a belief as to the truth of any allegation in paragraphs 9, 10 and 11 of the complaint, except, upon information and belief, they admit, referring to paragraph 11, that the Anchor Hocking defendant (with its subsidiaries) is the third largest manufacturer and distributor of glass containers in the United States.

12. Upon information and belief, they admit that between prior to 1929 and sometime in 1938 Illinois Glass Company owned some stock in defendant Hazel-Atlas, that in 1938 the said stock was distributed pro rata to stockholders of Illinois Glass Company, including defendants William E. Levis, R. H. Levis, Harold Boeschenstein, Isaac J. Collins and J. Harrison McNash, and that defendant William E. Levis during the period from 1932 to 1934 was on the board of directors of defendant Hazel-Atlas; they deny each and every other averment in paragraph 12 of the complaint in so far as it in any way relates to or affects Answering Defendants; and they are without knowledge or information sufficient to form a belief as to the truth of any of such other averments in so far as it may apply to other defendants.

13. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 13 of the complaint.

14. Upon information and belief, they admit the averments of paragraph 14 of the complaint.

15. Upon information and belief, they admit the allegations in paragraph 15 of the complaint; except that they [fol. 206] deny that all but two of the glass container manufacturers in the United States are members of the defendant Glass Container Association.

16. They deny each allegation in paragraph 16 of the complaint; except that they are without knowledge or information sufficient to form a belief as to the truth of the

averments as to when or where Stevenson Corporation was organized or whether Stevenson is the president, director and principal stockholder of Stevenson Corporation; and except that they admit that defendants Stevenson and Ackerman respectively have acted and are now acting as the business manager and as the assistant business manager of the Association.

17 through 26, except 21. Upon information and belief, they admit that some of the individual defendants named as officers or directors of defendants Hartford, Corning, Owens, Thatcher, Lynch, Liberty Glass, Anchor Hocking, and Ball Brothers, respectively, have purported to act as officers or directors of said defendants, respectively; and they are without knowledge or information sufficient to form a belief as to the truth of any other averment in paragraphs 17 through 26, except 21, of the complaint.

21. They admit that the individual defendants named in paragraph 21 of the complaint as officers or directors of defendant Hazel-Atlas, at various times, have been such officers or directors, have participated and participate in the direction and management of defendant Hazel-Atlas, and have approved, authorized, ordered, and done some or all of the acts alleged in the complaint to have been performed by defendant Hazel-Atlas; they deny that they or any of them have so approved, authorized, ordered and done, except as an officer or a director of defendant Hazel-Atlas; and they further deny that any of such acts was in violation of any one or more of the antitrust laws of the United States or was otherwise unlawful.

[fol. 207] 27, 28. They admit the averments in paragraphs 27 and 28 of the complaint; except that, upon information and belief, they deny the averment in paragraph 27 that Glass Container Association, Inc. is engaged in trade and commerce between and among the several States of the United States; and except that they are without knowledge or information sufficient to form a belief as to the truth of the averment in paragraph 27 that Stevenson Corporation and Empire Machine are engaged in such trade or commerce.

29. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 29 of the complaint.

30. Upon information and belief, they admit the averments in paragraph 30 of the complaint; except that they deny that subsequent to 1905 the methods of glassware production improved to such an extent that no manufacturer could commercially engage in the business of producing glassware unless automatic machinery was used; and except that they deny any knowledge or information sufficient to form a belief as to the truth of the averment that defendant Owens entered into license agreements which limited, as to weight or size, the type of glass containers which could be manufactured by such licensee, other than written license agreements under United States patents, to which reference is made for full and accurate statements thereof, and as to the truth of the averment that defendant Owens between 1905 and 1917 was the largest manufacturer and distributor of glass containers in the United States.

31. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 31 of the complaint.

32. They admit that prior to 1916 the Hartford-Fairmont Company, the predecessor of defendant Hartford, was or- [fol. 208] ganized, that Hartford-Fairmont thereafter developed automatic gob-feeding machines for use in the production of glass containers and blown glassware, and that such machines completed, at least partially, with the then existing Owens suction machines in the production of glass containers and blown glassware; and they are without knowledge or information sufficient to form a belief as to the truth of any other averment in paragraph 32 of the complaint.

33. They admit that since 1916 some, but not all, of the commercial methods for manufacturing glass containers and other blown glassware have been as follows:

(a) Sand, soda-ash, limestone, and cullet (broken glass) are mixed and then fed into a furnace or tank, and the melted mixture or batch then flows into sections of the furnace, from which it is fed to the glass-container making machines; they are without knowledge or information sufficient to form a belief as to the truth of the averment that there have been little or no instances of litigation with respect to tanks or furnaces used by companies engaged in the manufacture of glassware; and they deny each other averment in section (a) of paragraph 33 of the complaint.

(b) Glass-container making machines have been used, into which molten glass is fed, including the suction process type and the gob-feeding process type; in one of the gob-feeding processes, the molten glass is fed through an orifice by a mechanism which causes the glass to be extruded in gobs or separate drops, with shapes roughly approximating those of the molds into which they drop, when cut off by a pair of shears beneath the orifice; in one of the suction processes, the molten glass is sucked into iron molds, which revolve around a central pillar and each of which in turn dips into the pot of molten glass and sucks up its charge, and as each mold rises, a knife cuts the glass in the mold from that in the pot; they are without knowledge or information sufficient to form a belief as to the truth of the [fol. 209] averments in paragraph 33 of the complaint that defendant Owens has claimed control of the suction process and that defendant Hartford has claimed control of the gob-feeding method; and they deny each other averment in section (b) of said paragraph 33.

(c) They admit that in one of the suction processes the molten glass is sucked directly into the molds and in one of the gob-feeding processes the molds in which the molten glass is received are parts of a separate machine known as a former, and that until recently there have been several types of forming machinery manufactured and sold by several companies; and they deny each other averment in section (c) of said paragraph 33.

(d) They admit that after glassware leaves a forming machine it is sometimes carried by a conveyor into a lehr or oven, where it is stacked on a belt which moves slowly through an annealing chamber, and that this process of annealing tends to prevent the finished product from cracking or breaking when subjected to rapid changes in temperature; and they deny each other averment in section (d) of said paragraph 33.

Alleged "Offenses charged"

34. They deny each averment in paragraph 34 of the complaint in so far as it in any way relates to or affects Answering Defendants; and they are without knowledge or information sufficient to form a belief as to the truth of any of said averments in so far as it may apply to other defendants.

Alleged "Formation and continuation of the Conspiracy"

35. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 35 of the complaint.

[fol. 210] 36, 37, 38. They deny each averment in paragraphs 36, 37, and 38 of the complaint in so far as it in any way relates to or affects Answering Defendants; and they are without knowledge or information sufficient to form a belief as to the truth of any of said averments in so far as it may apply to other defendants.

Alleged "Hartford-Corning agreements of 1916 and 1922"

39 through 52. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraphs 39 through 52 of the complaint; except that, upon information and belief, they admit the averments in paragraph 45 that subsequent to 1916, and up to the present time, Hartford (or its predecessor Hartford-Fairmont) has issued licenses to a number of glassware manufacturers for the production of different types of glassware.

Alleged "Hartford-Owens relations"

53. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 53 of the complaint; except that, upon information and belief, they admit that prior to 1917 Owens entered into patent license agreements with various manufacturers relating to suction machines, limited to certain types of ware, including a license to Hazel-Atlas, reference to which is made for full and accurate statements thereof.

54. Upon information and belief, they admit that in 1915 Hartford-Fairmont had developed a certain type of glass container feeder machine, which Hartford-Fairmont thereafter leased and also licensed under one or more of its patent rights, that such leases and licenses were to various glass manufacturers at royalty percentage payments in some cases less than those charged by Owens for the license [fol. 211] and lease of some of its suction machines, that the initial lease and license fee on the said feeder machines was in some cases less than the initial lease and license on the Owens suction machines, that various glass manufac-

turers, who were using Owens suction machines, obtained leases and licenses from Hartford-Fairmont, and that this resulted in Owens experiencing greater competition in the manufacture of glass containers; and they are without knowledge or information sufficient to form a belief as to the truth of any other averment in paragraph 54 of the complaint.

55. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 55 of the complaint; except that they admit that in 1921 Owens obtained a license from Hazel-Atlas under the latter's Brookfield patents relating to glass feeding devices, which license was exclusive except for The Brookfield Glass Company and Hazel-Atlas, and that Owens had the record title to certain Bock patents on gob-feeding machinery and to certain applications for patents covering gob-feeding machinery, filed by its employee, Soubier; and except that they deny that in 1923 Owens purchased the Brookfield patents.

56. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 56 of the complaint; except that they admit that in 1919 defendant Peiler, an employee of Hartford-Fairmont, filed several patent applications relating to gob-feeding, that defendant Hartford in 1920 sued Berney-Bond Company, a Howard licensee, alleging infringement of two of Hartford's gob-feeding patents, and that such suit was settled at or about the time that Berney-Bond took a license from Hartford.

57. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 57 of the complaint.

[fol. 212] 58. They deny each averment in paragraph 58 of the complaint; except that they admit that in 1923 Owens sued J. T. & A. Hamilton Company, a Hartford licensee, alleging that the latter infringed the Lott patents 1,382,994 and 3, owned by Owens, and the Brookfield patents 883,297 and 883,779.

59. They deny each averment in paragraph 59 of the complaint; except that they admit that in 1920 Hartford sued United States Glass Company, a user of a so-called

Miller gob-feeding machine, claiming that it infringed two Hitchcock patents (Nos. 805,068 and reissue 13,929) relating to gob-feeding, which were owned by Hartford, and which dated from 1905, expiring in 1922, and that in 1923 Hartford lost the suit, 2 Fed. (2d) 109.

Alleged "Owens-Hartford 1924 agreement"

60 through 70. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraphs 60 through 70 of the complaint; except that, referring to paragraphs 62 and 63, upon information and belief, they admit that under date of April 9, 1924 Hartford, Owens and others entered into an agreement entitled "General License Agreement", to which reference is made for a full and accurate statement of its contents; and except that they deny the averment in paragraph 65 that said agreement was not known to Hazel-Atlas until 1932, and the averment in paragraph 70 that Owens has ever been in a position to dominate, or has dominated, the glass container industry.

Alleged "Patent litigation and acquisitions resulting in elimination of competition—1924 to 1932"

71. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 71 of the complaint.

[fol. 213] 72. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 72 of the complaint; except that they admit the averments that in 1924 there were a number of persons and companies not connected with either Hartford or Owens, some engaged in the business of manufacturing and distributing glass-making machinery and numerous others being manufacturers of glass containers, using glass-making machinery not developed, manufactured or distributed by Hartford or Owens.

73. They admit that Hartford did not prosecute an appeal from the decision in the United States Glass Company suit (referred to in paragraph 59 hereof), holding that certain claims of the Hitchcock patents were not infringed, and that Hartford thereby, as against that defendant, with respect to such claims and the alleged infringements, aban-

doned its rights; and they deny each other averment in paragraph 73 of the complaint.

74. Upon information and belief, they admit that after the 1924 agreement between Hartford and Owens had been made, a consent decree was entered into in a suit wherein Owens was a plaintiff, against J. T. & A. Hamilton Company, whereby Hartford, a party defendant to the suit, and the Hamilton Company, a Hartford licensee, admitted the validity of the Lott patents in suit; they deny that the validity of the Brookfield patents was admitted by either Hartford or Hamilton; and they are without knowledge or information sufficient to form a belief as to the truth of any other averment in paragraph 74 of the complaint.

75, 76. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraphs 75 and 76 of the complaint.

77. They admit that in 1925 Owens sued Miller Glass Engineering Company, claiming that the latter infringed [fol. 214] the Lott patents, and that the suit was eventually discontinued; and they are without knowledge or information sufficient to form a belief as to the truth of any other averment in paragraph 77 of the complaint.

78. They admit that in 1926 Hartford sued Lamb Glass Company, a user of a Miller machine, claiming that it infringed certain Hartford patents, which suit was partially successful, and that Hartford in 1930 instituted a second suit against Lamb Glass Company, reference being made to the pleadings and proceedings in each case for full and accurate statements thereof; and they are without knowledge or information sufficient to form a belief as to the truth of any other averment in paragraph 78 of the complaint.

79. Upon information and belief, they admit that Owens filed two suits for alleged patent infringement, one against Federal Glass Company, and the other against Tucker, Reeves and Beatty, claiming that certain so-called Tucker, Reeves and Beatty feeders infringed the Lott patents, that Hartford subsequently acquired certain Tucker, Reeves and Beatty patent rights, and that said suits were dismissed by Owens; and they are without knowledge or information suffi-

cient to form a belief as to the truth of any other averment in paragraph 79 of the complaint.

80. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 80 of the complaint.

81. They admit that in 1926 Hartford sued Nivison-Weiskopf Company, alleging that the latter infringed Hartford's "phase-change" patent 1,573,742 claimed to have been invented by defendant Peiler, as well as other patents (Steimer patent 1,564,909 and Peiler patent 1,589,304) and that there was an appeal from a district court decision partly in favor of Hartford; and they are without knowl-
[fol. 215] edge or information sufficient to form a belief as to the truth of any other averment in paragraph 81 of the complaint.

82. They admit that in 1925 there was pending before the United States Patent Office the application by defendant Peiler for the so-called "stuffing" patent 1,655,391, that an article was published in the July 17, 1926 issue of National Glass Budget, a trade paper, as signed by William P. Clarke as president of American Flint Glass Worker's Union, that such article was presented to the United States Patent Office by the applicant Peiler or his attorneys in connection with the prosecution of the application, that in 1928 the said patent issued to defendant Hartford, that in 1931, in connection with a suit by Hartford against Hazel-Atlas, reference was made by Hartford to this article, and that the Circuit Court of Appeals for the Third Circuit in such suit cited the article and based its findings to some extent on such article, *Hartford-Empire* v. *Hazel-Atlas Glass Company*, 59 F. (2d) 399; and they are without knowledge or information sufficient to form a belief as to the truth of any other averment in paragraph 82 of the complaint.

83. Upon information and belief, they admit that in 1926 Hartford commenced against Obear-Nester Glass Company the first of several patent infringement suits, relating to feeder patents, reference being made to the pleadings and proceedings in each such suit for full and accurate statements thereof; that Obear-Nester used air feeders after it had used plunger feeders; that in the first suit Obear-Nester was decided to have infringed certain Hartford pat-

ents because of its use of certain plunger feeders, that in the second suit Obear-Nester was decided not to have infringed any valid claim of any of certain other Hartford patents with respect to air feeder operation; and they are without knowledge or information sufficient to form a belief as to the truth of any other averment in paragraph 83 of the complaint.

[fol. 216] 84. They admit that in 1926 Hartford brought a feeder patent infringement suit against Kearns-Gorsuch Bottle Company, a wholly owned subsidiary of defendant Hazel-Atlas, and that it was decided in such suit that the Peiler "phase-change" patent, as to certain claims, was valid and infringed by Kearns-Gorsuch, reference being made to the pleadings and proceedings in such suit for a full and accurate statement thereof; and they are without knowledge or information sufficient to form a belief as to the truth of any other averment in paragraph 84 of the complaint.

85 though 91. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraphs 85 through 91 of the complaint; except that, upon information and belief, they admit, referring to paragraph 85, that in or about 1933 O'Neill Machine Company and Frank O'Neill sold certain patent rights to Hartford and to Owens, Hartford obtaining rights in the gob-feeder and forming machine fields and Owens obtaining rights in the suction machine field, referring to paragraph 90, that Hartford has brought patent infringement suits against Tygart Valley Glass Company and Shawkee Manufacturing Company, and, referring to paragraph 91 (e), that Hartford has obtained various patents on improvements of machinery and processes.

Alleged "February 4, 1931 Amendment to 1924 Agreement Between Hartford and Owens"

92, 93. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraphs 92 and 93 of the complaint; except that, upon information and belief, they admit that on or about February 4, 1931 Hartford and Owens entered into an agreement amending the April 9, 1924 agreement between them, reference being made to such amendment for a full and accurate statement of its contents.

[fol. 217] Alleged "Hartford, Owens and Hazel-Atlas Agreements, July 1, 1932"

94. They deny each averment in paragraph 94 of the complaint; except that they admit that in July, 1932 defendant Hazel-Atlas was the second largest manufacturer of glass containers in the United States; and except that they are without knowledge or information sufficient to form a belief as to the truth of any averment in said paragraph which may apply to defendants other than Answering Defendants.

95. They admit that in 1926 Hartford brought suit against Kearns-Gorsuch Company, a subsidiary of Hazel-Atlas, for alleged patent infringement, that Kearns-Gorsuch had several license and lease contracts with Hartford, to which reference is made for a full and accurate statement of their contents, whereby Kearns-Gorsuch had the right to use certain machines owned by Hartford, that Kearns-Gorsuch at the time of such suit was not using any of such machines, and that in such suit only some of the claims and patents relied upon were sustained as valid and infringed, reference being made to the pleadings and proceedings in such suit for a full and accurate statement thereof; and they are without knowledge or information sufficient to form a belief as to the truth of any other averment in paragraph 95 of the complaint.

96. They admit that in 1928 Hartford brought suit against Hazel-Atlas, claiming that the latter, which was using feeders which Hazel-Atlas had developed, was infringing the "stuffing" patent, issued in 1928, that such suit was still pending in 1932, having cost Hazel-Atlas about $100,000 a year; that the Circuit Court of Appeals for the Third Circuit on May 5, 1932 decided that Hazel-Atlas infringed the "stuffing" patent, and that Hazel-Atlas thereafter considered an application to the United States Supreme Court for a writ of certiorari; and they are with-
[fol. 218] out knowledge or information sufficient to form a belief as to the truth of any other averment in paragraph 96 of the complaint.

97. They admit that after said decision Hartford and Owens entered into negotiations with Hazel-Atlas, for the purpose of settling pending controversies, including the

then pending patent litigation between Hartford and Hazel; and they are without knowledge or information sufficient to form a belief as to the truth of any other averment in paragraph 97 of the complaint.

98 through 105. They deny each averment in paragraphs 98 through 105 of the complaint except that they admit that written agreements were entered into on or about the dates specified and between the parties specified, referring to such agreements for full and accurate statements of the contents thereof, and that all the obligations thereunder heretofore due have been duly performed, on information and belief as to defendants Owens and Hartford.

106. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 106 of the complaint.

107. They deny each averment in paragraph 107 of the complaint; except that they admit that under date of March 28, 1928 a written agreement was entered into between Brockway Machine Bottle Company, as party of the first part and Kearns-Gorsuch Bottle Company and Hazel-Atlas Company, as parties of the second part, reference to which is made for a full and accurate statement of its contents, that the nature of the terms of the General License Agreement between Hazel-Atlas and Hartford of July 1, 1932 was not disclosed by Hazel-Atlas to Brockway and that the existence of such agreement was known by Hartford prior to July 1, 1932; and they are without knowledge or information sufficient to form a belief as to the truth of any other averment in said paragraph 107.

[fol. 219] 108. They admit the averments in paragraph 108 of the complaint that the amounts paid by Hartford to Hazel-Atlas, under said General License Agreement, substantially exceeded the royalties paid by Hazel-Atlas to Hartford under such agreement; and they are without knowledge or information sufficient to form a belief as to what amounts were paid by Hartford and what royalties were paid by Owens under the General License Agreement between them.

109. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 109 of the complaint.

110. They admit that on July 1, 1932 Hazel-Atlas was the largest manufacturer of glass containers which was not licensed under Hartford patents, and that in connection with the General License Agreement of July 1, 1932, between Hazel-Atlas and Hartford, Hazel-Atlas did not file a petition for a writ of certiorari in the "stuffing" patent suit against it, and, upon information and belief, that in August, 1932 Knox Glass Bottle Company (and the four operating companies affiliated with it) were collectively the fourth largest group manufacturing glass containers in the United States; they deny that Hazel-Atlas has ever agreed to or been prevented from defending or resisting any Hartford patent claims against it in any court or courts, and that Hazel-Atlas has been prevented in any way from making inventions which would supersede or make obsolete the Hartford patents; and they are without knowledge or information sufficient to form a belief as to the truth of any other averment in paragraph 110 of the complaint.

Alleged "Hartford-Lynch Agreement, 1933"

111. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 111 of the complaint.

[fol. 220] 112 through 120. They admit that, referring to paragraph 112 of the complaint, for ten years prior to 1927 defendant Lynch Corporation marketed automatic forming machines, and that in 1927 a large percentage of the narrow neck bottle machine formers in use were Lynch machines; and they are without knowledge or information sufficient to form a belief as to the truth of any other averment in paragraphs 112 through 120 of the complaint.

121. They deny each averment in paragraph 121 of the complaint.

Alleged "Elimination of Competition in Lehrs"

122 through 124. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraphs 122 through 124 of the complaint; except that they admit that a patent infringement suit was brought by Hartford against Swindell Brothers, Inc., refer-

ence being made to the pleadings and proceedings in such suit for a full and accurate statement thereof.

125. They deny each averment in paragraph 125 of the complaint.

Alleged "1935 Hartford-Owens Agreements"

126, 127. Upon information and belief, they deny each averment in paragraphs 126 and 127 of the complaint; except that they admit that written agreements were entered into on the dates specified therein and between the parties specified, reference being made to such agreements for full and accurate statements thereof.

Alleged "Hartford-Owens-Thatcher-Liberty Agreements Regarding Milk Bottles"

128 through 142. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraphs 128 through 142 of the complaint.

[fol. 221] Alleged "Hartford, Owens, Hazel-Atlas-Ball Brothers Agreements"

143. They deny each averment in paragraph 143 of the complaint.

144. Upon information and belief, they admit the averments in paragraph 144 of the complaint.

145 through 147. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraphs 145 through 147 of the complaint; except that, upon information and belief, they admit that in 1925 Ball Brothers acquired the business of Schram Manufacturing Company and in 1929 the business of the Pine Glass Company, referring to paragraph 145, and that in 1932 and 1933 Hartford carried on negotiations with Ball Brothers regarding a proposed license to Ball Brothers under Hartford patents, referring to paragraph 147.

148. They deny each averment in paragraph 148 of the complaint; except that they admit that prior to March 25, 1933 Owens, Hazel-Atlas, Salem Glass Works, Gayner Glass Works, Knox Glass Bottle Company and Brockway Glass Company were manufacturing and selling fruit jars, and that Owens and Hazel-Atlas were licensed under Hartford

patents; and except that they are without knowledge or information sufficient to form a belief as to the truth of the averments that Salem Glass Works and Gayner Glass Works were licensed by Hartford and that Knox Glass Company and Brockway Glass Company were making fruit jars on machinery not licensed by Hartford.

149 through 153. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraphs 149 through 153 of the complaint; except that they deny that Answering Defendants have [fol. 222] been parties to any conspiracy, monopoly or combination in restraint of trade.

154, 155. They deny that Hazel-Atlas gave its approval to any agreement entered into in 1933 between Hartford and Ball Brothers; and they are without knowledge or information sufficient to form a belief as to the truth of any other averment in paragraphs 154 and 155 of the complaint.

156. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 156 of the complaint; except that they deny that Hazel-Atlas entered into any agreement not to produce in excess of 300,000 gross of fruit jars a year.

157. They admit that since March 25, 1933 Hazel-Atlas has not produced more than 300,000 gross of fruit jars in any year; and they are without knowledge or information sufficient to form a belief as to the truth of any other averment in paragraph 157 of the complaint.

158 through 162. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraphs 158 through 162 of the complaint.

163, 164. They deny each averment in paragraphs 163 and 164 of the complaint in so far as it in any way relates to or affects Answering Defendants; and they are without knowledge or information sufficient to form a belief of the truth of said averments in so far as the same may apply to other defendants.

Alleged "Hartford, Owens and Anchor Hocking Relations"

165 through 169. They admit that, as alleged in paragraph 165 of the complaint, for a number of years prior to

1931 there were various manufacturers of a general line [fol. 223] of glass containers in competition with Owens and smaller than it, and that Illinois Glass Company owned some stock in defendant Hazel-Atlas, and that defendant Anchor Hocking is the third largest manufacturer of glass containers in the United States; they deny that Answering Defendants have been parties to any conspiracy, monopoly or combination in restraint of trade; and they are without knowledge or information sufficient to form a belief as to the truth of any other averment in paragraphs 165 through 169 of the complaint.

Alleged "The Glass Container Association; production Quotas and Maintenance of Prices"

170. They deny each allegation in paragraph 170 of the complaint; except that they admit that in 1919 the defendant Glass Container Association was organized as a trade association for the glass container industry to promote the manufacture, sale and use of glass containers and allied articles, and, among other purposes, to compile technical information, to publicize the industry, to aid in the improvement and quality of glass, and to encourage uniformity of legislation and government regulations affecting the glass industry, that one I. J. Jennings was employed by the Association during the period from 1920 to 1928, that since about February 1928 to date defendant Stevenson has acted as business manager of the Association, and that since about October 1929 to date defendant Ackerman has acted as assistant business manager of the Association.

171. They admit the allegations of paragraph 171 of the complaint; except that they deny the averment that all glass container manufacturers in the United States but two are members of the Association.

172. They deny each averment in paragraph 172 of the complaint; except that they admit upon information and [fol. 224] belief, that prior to 1928 the defendant Glass Container Association's activities included the collection and dissemination of statistical data and the issuance of advertising matter regarding the use of glass.

173. They deny each averment in paragraph 173 of the complaint, so far as it in any way relates to or affects Answering Defendants, and, upon information and belief,

in so far as any of said averments may apply to other defendants.

174. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 174 of the complaint, except that they deny that Hartford is not a member of the Association.

175. They deny that Answering Defendants have been engaged in or parties to any conspiracy, monopoly or combination in restraint of trade; and, upon information and belief, they deny each other averment in paragraph 175 of the complaint.

176. They deny each averment in paragraph 176 of the complaint; except that they are without knowledge or information sufficient to form a belief as to the truth of the averments relating to the alleged policy of Hartford and Owens.

177. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 177 of the complaint.

178 through 180. They deny each averment in paragraphs 178 through 180 of the complaint; except that they are without knowledge or information sufficient to form a belief as to the truth of the averments that defendant Corning is the recognized price leader in the industry for heat-resisting ware and that defendant Thatcher is the recognized price leader in the industry for milk bottles; and except that they [fol. 225] admit that defendant Owens is the recognized price leader for certain narrow-mouth glassware, that Hazel-Atlas is the recognized price leader for wide-mouth glassware (principally packers' glassware) and that Ball Brothers is the recognized price leader for fruit jars.

Alleged "Espionage and Similar Tactics by Hartford, Owens and Corning"

181 through 187. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraphs 181 through 187 of the complaint.

Alleged "Volume of Business and Profits"

188. They deny each averment in paragraph 188 of the complaint, in so far as it in any way relates to or affects

Answering Defendants; and they are without knowledge or information sufficient to form a belief as to the truth of any of said averments in so far as it may apply to other defendants.

189. Upon information and belief, they admit the averments in paragraph 189 of the complaint.

190 through 192. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraphs 190 through 192 of the complaint; except that, upon information and belief, they admit that Hartford, Corning and Owens in some years have had substantial earnings.

193. They admit the averments in paragraph 193 of the complaint.

194 through 198. They are without knowledge or information sufficient to form a belief as to the truth of any [fol. 226] averment in paragraphs 194 through 198 of the complaint; except that they admit, upon information and belief, that Thatcher, Lynch, Ball Brothers, Anchor Hocking and Liberty Glass in some years have had substantial earnings.

Alleged "Restrictions on Machinery and Restrictions on Use and Production of Glass Containers"

199. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 199 of the complaint.

Alleged "Restrictions on Machines"

200. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 200 of the complaint.

201 through 204. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraphs 201 through 204 of the complaint; except that they deny that competition in the glass container industry has been, or is being, stifled; and except that they admit that Hartford and Owens have granted some written patent licenses for patent rights, containing provisions relating to improvements on licensed machinery,

an admission of patent validity, etc., to which agreements reference is made for full and accurate statements thereof.

Alleged "Restrictions on Use and Production of Glass Containers"

205, 206. They deny each averment in paragraphs 205 and 206 of the complaint in so far as it in any way relates to or affects Answering Defendants; and they are without knowledge or information sufficient to form a belief as to [fol. 227] the truth of any of such averments in so far as it may apply to other defendants.

207. They deny that Hazel-Atlas is limited by any agreement with respect to the production of fruit jars (as is stated in paragraph 156 of this answer); and they are without knowledge or information sufficient to form a belief as to the truth of any other averment in paragraph 207 of the complaint.

208. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 208 of the complaint.

209. They deny that Owens has not granted a new license under patents since 1918; and they are without knowledge or information sufficient to form a belief as to the truth of the averment in paragraph 209 of the complaint that Owens has never granted an unrestricted license.

210. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 210 of the complaint; except that they admit that some of the patent licenses granted by Hartford contained clauses limiting the use of the licensed inventions, to which licenses reference is made for full and accurate statements thereof.

211 through 216. They deny the averment in paragraph 211 of the complaint that the license rights of Hazel-Atlas under its license agreements with Hartford are not limited as to type or kind of glassware which may be manufactured thereunder; and they are without knowledge or information sufficient to form a belief as to the truth of any other averment in paragraphs 211 through 216 of the complaint.

[fol. 228] Alleged "Refusals to License"

217. They deny each averment in paragraph 217 of the complaint in so far as it in any way relates to or affects Answering Defendants; they specifically deny that Answering Defendants have participated in any monopolistic control or domination, or any suppression or prevention of substantial competition in the production and sale in interstate commerce of glassware machinery and glassware products manufactured therefrom, or either such machinery or glassware; and they are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 217 of the complaint in so far as it may apply to other defendants.

218. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 218 of the complaint.

Alleged "Extent of Monopoly"

219. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 219 of the complaint; except that they deny that Hartford and Owens or either of them, own, control or dominate either virtually or substantially all patents on glassmaking machinery; and except that, upon information and belief, they admit that in 1937 approximately 3.4% of the glass containers produced and distributed in the United States was made by the Obear-Nester Glass Company, F. E. Reed Glass Company and Alexander H. Kerr & Co.

225, 226. (The complaint has no paragraphs numbered 220 through 224). They are without knowledge or informa-
[fol. 229] tion sufficient to form a belief as to the truth of any averment in paragraphs 225 and 226 of the complaint.

227. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 227 of the complaint; except that, upon information and belief, they admit, that in 1937 Owens, Hazel-Atlas, Anchor-Hocking, Thatcher, and Ball Brothers manufactured and distributed approximately 69.55% of all glass containers (including milk bottles and fruit jars) produced in the United States; that Owens manufactured approximately 38.03%; Hazel-Atlas approximately 16.89%; An-

chor-Hocking approximately 8.01%; Thatcher approximately 2.87% and Ball Brothers approximately 3.75%; and that said concerns and others were licensed under Hartford patents.

228. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 228 of the complaint.

229. They are without knowledge or information sufficient to form a belief as to the truth of any averment in paragraph 229 of the complaint; except that, upon information and belief, they admit, that in 1937 Owens, Ball Brothers and Hazel-Atlas manufactured and distributed approximately 84.59% of all fruit jars produced in the United States; that Ball Brothers manufactured approximately 56.73% of said fruit jars; Hazel-Atlas approximately 20.13%; Owens approximately 7.73%; and Alexander H. Kerr & Co. approximately 15.41%; and except that they are without knowledge or information sufficient to form a belief as to the truth of the averment that Alexander H. Kerr & Co. is being sued by Hartford for alleged patent infringement.

230. They deny each averment in paragraph 230 of the complaint, in so far as it in any way relates to or affects [fol. 230] Answering Defendants; and they are without knowledge or information sufficient to form a belief as to the truth of any of such averments in so far as it may apply to other defendants.

Wherefore, Answering Defendants pray that the complaint be dismissed as to them, with costs.

(S) Joseph D. Stecher, Attorney for Hazel-Atlas Glass Company, and other Answering Defendants.
(S) Stephen H. Philbin, Of Counsel.

[fol. 231] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

JOINT AND SEVERAL ANSWER OF DEFENDANTS, OWENS-ILLINOIS GLASS COMPANY, ET AL., filed March 7, 1940.

Now come Owens-Illinois Glass Company, Wm. E. Levis, A. W. Sherwood, F. J. Solon, F. F. Martin, F. T. Nesbitt, [fol. 232] John H. McNerney, R. H. Barnard, C. B. Belknap, Harold Boeschenstein, W. H. Boshart, H. E. Collin (impleaded as H. R. Collin), George P. Greenhalgh, Ben F. Hazelton, Jr., W. W. Knight, R. H. Levis, F. H. McAdoo, H. G. Phillipps (impleaded as H. C. Phillipps), C. J. Root, F. W. Schwenck, and C. J. Wilcox, hereinafter collectively referred to as "answering defendants," and for answer to the complaint, severally admit, deny, and aver as hereinafter set forth. For brevity and convenience in reference, they adopt, for the purposes of this answer, the short names of the corporate defendants in this cause used by the plaintiff in the complaint.

Part I

Answering generally the complaint, these answering defendants deny that they ever entered into any agreement or conspiracy in violation of the anti-trust laws of the United States and deny that they are or ever have been parties to any agreement in unlawful restraint of trade. The defendant Owens has no participation in the fees or royalties of Hartford or any other defendant; it denies that it has any right or interest in or under any of the "tying clauses" alleged in the complaint; it is not a party to any agreement looking to the limitation of production or sales of glass containers and is not a party to any agreement looking toward the fixing of prices of such containers or of machinery for the production thereof.

The continuous and deliberate policy of defendant Owens has been and is to sell the glass containers manufactured by it at the lowest prices consistent with high quality and [fol. 233] service, to expand the use of glass containers, pay higher wages, promote better labor conditions, give steady employment, and seek a profit through good man-

agement, competitive enterprise, and constantly improving efficiency.

In 1924, to settle long-standing controversies in the United States Patent Office and in the courts, Owens and Hartford entered into a cross-licensing agreement under their respective patents on feeders and feeder fed forming machines (excluding Owens suction machines), whereby Hartford granted to Owens the right to use such Hartford inventions in the manufacture of glass containers and Owens granted to Hartford the right to use, and sublicense others to use, such inventions of Owens in the manufacture of glass containers, and whereby Owens secured a participation in the royalties received by Hartford from others for the use of such Owens inventions.

As of January 1, 1929, Owens, which was an Ohio corporation known as The Owens Bottle Company, acquired substantially all of the bottle making assets of Illinois Glass Company, an Illinois corporation, and changed its name to Owens-Illinois Glass Company. Its new management resulting from this merger inherited a patent and licensing policy dating back to Owens' revolutionary development of automatic bottle blowing machines, which began in 1899. Becoming interested for the first time in royalty income from licenses, the new management attempted to increase this source of income, only to discover that the demands for executive attention required by this phase of the business were far out of proportion to the net profit to be returned from this activity. The new management thus came [fol. 234] to the conclusion that the Company's future and prosperity lay in the manufacture of glass containers and other types of containers and other glass articles, and, having reached that conclusion, sold out its interest in licensing income in 1935 for $2,500,000, after having previously gradually withdrawn from various phases of this type of business.

In 1931, Owens cancelled its contractual right to veto any grant of licenses by Hartford under Owens patents. In 1932, the provisions of the 1924 agreement between Owens and Hartford for the joint prosecution of infringements and interference proceedings, the joint purchase of patent rights held by others, the use by Owens of 40 units free from royalty, and the exclusiveness of Owens' license to Hartford, were all terminated.

In 1935, all previous contracts between Owens and Hartford were cancelled and ordinary nonexclusive licenses were entered into between Owens and Hartford, which nonexclusive licenses have been continuously in force ever since. Owens' license to Hartford gives Hartford the right to sublicense others without any restriction or payment to Owens. Under its license from Hartford, Owens pays the same rate of royalty as any other licensee of Hartford for the use of Hartford's machinery, and is among the largest payers of royalty for the use of such machinery. Owens enjoys no discounts or rebates on such royalties, has no understandings for limiting production, and has not contributed to the expense of any infringement or interference proceedings brought by Hartford since 1932. The broad suction machine patents which Owens once had have now long since expired, and its existing patents cover only contemporary improvements in its own factory operations. [fol. 235] Such licenses as Owens has acquired in glass container machinery since 1935 have been for the purpose of avoiding interference with patents of others which might restrain its own mechanical developments. Since 1935, it has brought no infringement suits covering any of its rights in glass container machinery.

Owens is not engaged in the manufacture and sale of glass making machinery but is engaged in the manufacture and sale of containers of various kinds. It is in continuous competition with all kinds of containers made from substances other than glass, in addition to its competition with some 37 other glass container manufacturers. While Owens in the earlier years of its existence obtained a relatively large proportion of its income from licenses, its gross receipts from license fees and royalties during the past 10 years have amounted to less than 1% of its entire gross income. During said 10-year period, Owens had manufactured and sold more than twenty billion bottles at a gross price of approximately $492,000,000, as against its gross royalty income on glass container machinery of only $4,100,000. During said 10 years Owens has itself paid in royalty to others in excess of $5,000,000 and has expended in development work in excess of $8,000,000. Owens has many thousands of people in its employ and not in excess of 10 of those employees have at any one time ever been employed in connection with its licensing business.

The "Levis Group," of which certain individual defendants are said to be members, is a misnomer, as there is no such group known in the glass container industry. The term appears to be used with reference to former stock-
[fol. 236] holders of Illinois Glass Company, which since 1929 was an investment company owning interests in various stocks, including minority interest in some glass stocks. The Illinois Glass Company was liquidated and dissolved in September, 1938, and all of its stocks in other companies were distributed to its stockholders (some 135 in number) in kind. The stocks so distributed have not been kept together in any pool or voting trust and have not been the subject of any agreement whereby they are or will be voted in concert or withheld from sale or transfer. The said individual distributees have not taken any concerted action to secure representation on the Boards of Directors of any of the said companies, the stocks of which were so distributed. Since 1929, Owens has never owned any stock in any corporation which is a defendant in the present case. No officer or director of Owens is an officer, director or employee of any other corporate defendant. Owens has no representative or agent on the Board of Directors of any other corporate defendant, and makes no effort to control their policies.

During the past 10 years, the prices of glass containers manufactured by Owens have decreased despite an increase of more than 40% in the hourly wage. A far greater number of people are employed by Owens than were employed in 1929. During the past 10 years, Owens has been substantially free from labor trouble, its employment has been steady and is distributed throughout communities of relatively small size.

Owens is not anti-social, but is devoting its energies to providing steady employment, to making and selling better glass containers at reasonable profit, and to maintaining a proper balance between furnishing good service to the pub-
[fol. 237] lic at moderate prices, giving steady employment to support the 15,000 families now relying upon it for livelihood, and providing for fair return to its 10,000 stockholders.

Part II

The paragraphs of Part II of this answer are numbered to correspond with the paragraph numbers in the com-

plaint; and, unless otherwise stated, the admissions, denials, and averments of each paragraph thereof refer and relate to the paragraph of the complaint which bears the same number. The various bills of particulars filed by the plaintiff, since the filing of the complaint, have been considered as attached to, and as a part of, the complaint, as though the statements therein contained were incorporated within the respective paragraphs of the complaint to which they refer. The admissions, denials, and averments of this answer, therefore, apply and relate to the complaint as if amended by the several bills of particulars.

1. These answering defendants admit that the complaint is filed and these proceedings are instituted under Section 4 of the Sherman Anti-Trust Act and under Section 15 of the Clayton Act, in order to prevent violations of Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act; but they deny that they, or any of them, have committed any such violation.

2. They admit that certain of the defendants conduct their business and are found within the Western Division of the Northern District of Ohio and that interstate trade and commerce involved in the glass industry are carried on in part within such district and division. They deny [fol. 238] the averments of paragraph 2 except as in this paragraph set forth.

3. They admit that Hartford is a corporation organized under the laws of Delaware in 1922, with principal offices at Hartford, Connecticut; that it succeeded to the assets of the Hartford-Fairmont Company; that it is engaged, among other activities, in the leasing and licensing of machinery for manufacture of glassware and does not itself manufacture glassware for sale to the trade. They deny all other averments of this paragraph.

4. On information and belief, they admit all averments contained in this paragraph.

5 and 6. They are without knowledge or information sufficient to form a belief as to the truth of the averments of these paragraphs.

7. They admit the averments of this paragraph, excepting the averment with respect to the original name of Owens taken at the time of its incorporation in 1907,

which, they aver, was The Owens Bottle-Machine Company, which name was changed in 1919 to the name, The Owens Bottle Company.

8. They admit the averments set forth in the first sentence and in the last sentence of this paragraph but deny the remaining averments of said paragraph for lack of knowledge or information sufficient to form a belief as to the truth thereof.

9. They admit the averments set forth in this paragraph.

10. They admit that Lynch is an Indiana corporation, with its principal office at Anderson, Indiana, and that it [fol. 239] is a large manufacturer of forming machines for the manufacture of glassware. They are without knowledge or information sufficient to form a belief as to the truth of the other averments of this paragraph.

11. They admit that Anchor Hocking is a Delaware corporation, with its principal office at Lancaster, Ohio, and that it is a large manufacturer and distributor of glass containers. They are without knowledge or information sufficient to form a belief as to the truth of the other averments of this paragraph.

12. They admit that Illinois Glass Company, an Illinois corporation, sold a substantial part of its assets to the defendant Owens in 1929; that Illinois Glass Company, between prior to 1929 and sometime in 1938, owned stock in the defendant Owens, and that during said period Illinois Glass Company owned stock, but never as much as 10 per cent, in the defendants Hazel-Atlas, Lynch, Thatcher, and Anchor Hocking; that, in 1938, such stock in the above mentioned companies and other companies was distributed pro rata to the stockholders of Illinois Glass Company, including William E. Levis, R. H. Levis, Harold Boeschenstein, Isaac J. Collins, J. Harrison McNash, and other individuals; that William E. Levis and Harold Boeschenstein were and are officers or directors of defendant Owens and that R. H. Levis was a director of Owens; that William E. Levis served on the board of Hazel-Atlas from October 3, 1933, to October 25, 1935. They deny all the other averments contained in said paragraph 12.

They specifically deny the existence at any time of any group known in the industry as the "Levis Group"; and they aver that, from 1929 to the date of dissolution of

[fol. 240] Illinois Glass Company, it, the said Illinois Glass Company, was not an operating company but that it owned and held corporate shares of many companies as investments, including shares in certain glass manufacturing companies. On information and belief, they aver that the defendant companies in which said Illinois Glass Company held stock, the greatest amount of stock so held, the dates of such holdings, and the amount of the stock of such companies, respectively, then outstanding were as follows:

Name of Company	Date of Highest Holding	No. of Shares Held	No. of Shares Outstanding	Percentage Held
Owens	April 21, 1937	447,510*	2,661,204	16.816
Hazel-Atlas	August 1, 1933	25,000**	434,409	5.755
Lynch	February 5, 1935	4,500*	135,000	3.33
Thatcher	May 20, 1935	10,000*	146,832	6.81
Anchor Hocking	January 12, 1938	48,369*	715,550	6.76

* These shares held at date of liquidation of Illinois Glass Company—September 9, 1938.
** 20,000 shares held at date of liquidation of Illinois Glass Company—September 9, 1938.

They further aver that Illinois Glass Company was dissolved on or about the first of September, 1938, and that the distribution of stocks of other companies above mentioned was made pursuant to and as a part of the dissolution proceedings.

William E. Levis, R. H. Levis, and Harold Boeschenstein further aver that they represented others, or were represented by others, on the boards of directors of those companies in which Illinois Glass Company was a shareholder or in which they individually were shareholders, only in such manner as stockholders of corporations generally are represented on the boards of directors of such coporations.

[fol. 241] William E. Levis further avers that he owns no stock in Hazel-Atlas, Lynch, Thatcher, or Anchor Hocking, or in any glass container manufacturing company excepting Owens.

13. They admit that Liberty is an Oklahoma corporation, with its principal office at Sapulpa, Oklahoma, and is a large manufacturer and distributor of glass milk bottles. They are without knowledge or information sufficient to form a belief as to the other averments of this paragraph.

14. On information and belief they admit the averments of this paragraph.

15. They admit the averments set forth in paragraph 15 of the complaint, excepting the averment that all but two of the glass container manufacturers in the United States are members of the Glass Container Association, which for want of information they deny.

16. They admit that Charles R. Stevenson and Emory G. Ackerman have supervised and conducted and now supervise and conduct the affairs of the Glass Container Association; aver that they do so and have done so subject to the authority and control of the board of directors of the Association, and that said Charles R. Stevenson so acts as an individual and not as president, director, or as stockholder of the Stevenson Corporation. They deny all other averments set forth in this paragraph.

17. They admit that the individuals named in paragraph 17 of the complaint are, or have been, officers or directors of Hartford; but they are without knowledge or information sufficient to form a belief as to the truth of the other averments of paragraph 17 and therefore they deny the same.

[fol. 242] 18. They admit that the individuals named in paragraph 18 of the complaint are or have been officers or directors of Corning; that they are without knowledge or information sufficient to form a belief as to the truth of the other averments of paragraph 18 and therefore they deny the same.

19. They are without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph.

20. They admit that the individual defendants named in paragraph 20 of the complaint have been or are officers or directors of Owens, but only for the times and in the capacities as follows, to-wit:

William E. Lewis—officer and director since April 17, 1929;

A. W. Sherwood—officer from April 16, 1930, to April 19, 1939—never a director;

F. J. Solon—officer since April 18, 1934—never a director;

E. F. Martin—officer since April 21, 1926—never a director;

F. T. Nesbitt—officer since January 19, 1937—never a director;

J. H. McNerney—officer since December 19, 1917—never a director;

R. H. Barnard—vice-president since April 16, 1930—director since July 12, 1935;

C. B. Belknap—vice-president since April 19, 1933—director since July 12, 1935;

Harold Boeschenstein—vice-president from April 17, 1929, to October 31, 1938—director since April 19, 1933;

W. H. Boshart—officer from June 16, 1908, to January 2, 1930—director since November 14, 1911;

H. E. Collin—director since July 23, 1926;

George P. Greenhalgh—director since July 12, 1935;

[fol. 243] *Ben F. Hazelton, Jr.*—vice-president from September 16, 1930, to March 19, 1937—director from January 20, 1931; died February 3, 1940;

W. W. Knight—director since April 20, 1932;

R. H. Levis—director from April 17, 1929, to August 24, 1938—vice-president from April 17, 1929, to April 18, 1934;

F. H. McAdoo—director from April 21, 1926, to July 21, 1931, and since April 17, 1935;

H. G. Phillipps—vice-president from April 20, 1927, to April 19, 1939—director since April 17, 1929;

C. J. Root—director since September 16, 1932;

F. W. Schwenck—director since April 18, 1928;

C. J. Wilcox—director since April 15, 1936.

They further admit that such individuals have participated in the direction and management of Owens, but only to the extent of their several authorities as such directors or officers and only during such times as they respectively were officers or directors thereof. They further admit that such individuals have approved, authorized, ordered, or done some but not all the acts alleged to have been performed by defendant Owens, but only to the extent of their several authorities as such directors or officers and only during such times as they were respectively officers or directors of Owens. These answering defendants, each for himself, deny that they have participated, approved, authorized, ordered, or done anything illegal or contrary to law or pursuant to any conspiracy, contract, or combination in violation of the Sherman Act or of the Clayton Act.

21 to 26, inclusive. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraphs 21 to 26, inclusive.

[fol. 244] 27. They admit that Owens and some, but not all, of the other corporate defendants are engaged in trade and commerce between and among the several states of the United States.

28. They admit the averments set forth in this paragraph with respect to some, but not all, of the glass machinery and kinds of glassware referred to.

29. They deny that, for the purpose of this complaint or any other purpose, the glassware industry may be divided into two divisions—glass container and pressed and blown glassware. They aver that the classification of glassware as glass containers, set forth in the first sentence of paragraph 29 of the complaint, is based upon the use to which the glassware is put and that the division of pressed and blown glassware is based upon the method by which the glassware is made; and that a large percentage of all glass containers, particularly packers' jars and milk bottles, are "pressed and blown glassware" and are so recognized by the industry. The other averments of paragraph 29 are therefore denied as being based on an erroneous classification.

30. They admit that, prior to 1905, glassware was made in the United States by hand or by semi-automatic machinery. They admit that, in or about 1905, the glass industry, so far as it related to the manufacture of blown containers, was revolutionized by the invention of an automatic suction-feed bottle-blowing machine by Michael J. Owens (named in the complaint as "Michael F. Owens"), who was associated with the predecessor of the defendant Owens. They aver [fol 245] that such predecessor was Owens Bottle-Machine Company, a corporation of New Jersey, and that, previous to that, Michael J. Owens, together with Edward D. Libbey, caused the organization of The Toledo Glass Company in 1895 for the purpose of experimenting with, developing, and reducing to commercially usable forms, the invention of Michael J. Owens which subsequently included the Owens automatic bottle machine; that The Toledo Glass Company, under the leadership of Michael J. Owens, assisted by others employed by the company, succeeded in producing a

commercially usable bottle-blowing machine in or about the year 1903, whereupon The Toledo Glass Company, Michael J. Owens, Edward D. Libbey, and others caused the organization of Owens Bottle-Machine Company of New Jersey, above referred to as a predecessor of defendant Owens, to which The Toledo Glass Company granted an exclusive, divisible, and assignable license for the United States only for the term of seventeen years for the use of the inventions of said Michael J. Owens and of The Toledo Glass Company, and improvements thereon made during the said term, for the manufacture of bottles and jars and parts thereof and therefor; that said Owens Bottle-Machine Company of New Jersey did not engage in the manufacture of glassware, except as an incident to the development and licensing of said Owens suction machines, but confined itself to the granting of sublicenses to others for the use of said inventions of Michael J. Owens in the commercial manufacture of bottles and jars and parts thereof and therefor, and to manufacturing and furnishing the machines so licensed; that, in 1907, said last mentioned company transferred all its assets to defendant Owens, organized in [fol. 246] that year under the laws of Ohio and under the name, The Owens Bottle-Machine Company; that it had no plant for the manufacture of glass containers excepting a small experimental plant in Toledo, Ohio, until about the year 1911, when, through a subsidiary, The Owens West Virginia Bottle Company, it erected a small plant at Fairmont, West Virginia; that about the year 1912, it took a twenty-five per cent interest in a company, The Owens Eastern Bottle Company, for the construction of a small plant at Clarksburg, West Virginia, acquiring the full ownership thereof in 1914, and thereafter continued to expand by building, enlarging, and acquiring plants for the manufacture of glass containers.

They deny that, subsequent to 1905, the methods of glassware production improved to such an extent that no manufacturer could commercially engage in the business of producing glassware unless automatic machinery were used. They deny that, from time to time between 1905 and 1917, Owens was the largest manufacturer and distributor of glass containers in the United States. They admit that Owens owned various patents and inventions for the manufacture of glassware machinery between 1907 and 1917, embodying what was known as the suction method, but aver

that such patents and inventions owned were of minor importance and that the principal patents and inventions on the suction method were owned by The Toledo Glass Company and that the defendant Owens had under them only a license (exclusive) to use in the United States such inventions in the manufacture of bottles and jars and parts thereof and therefor.

They deny that Owens itself manufactured glassware-manufacturing machinery and aver that it caused the same [fol. 247] to be manufactured for it and delivered such machinery to other manufacturers of glassware under license agreements granting the right to manufacture bottles and jars of certain weights, sizes, and types.

They admit that, under such license agreements, royalties were paid by the licensees to Owens and that, under some of such licenses made after December 31, 1913, the licensees agreed that all improvements made on the machines by the licensees were to be transferred to Owens, but aver that, under the licenses made prior to said last mentioned date, the licensees agreed that all improvements made on the machines by the licensees were to be transferred to The Toledo Glass Company.

31. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 31.

32. They admit that Hartford-Fairmont, the predecessor of Hartford, was organized prior to 1916; that it developed an invention (and, these defendants believe, more than one invention) for an automatic gob-feeding machine for *use in the production of* (but not *to* produce) glass containers and blown glassware; and that said machines were used in competition with then existing Owens suction machines, but aver that the competition was not limited to Owens machines.

33. They admit that the method of manufacturing glass containers described in subparagraph 33(a) of the complaint has been, since 1916, one of the commercial methods for manufacturing glass containers and other blown glassware but aver that this is not the only such method. Upon information and belief they admit the allegations contained in the last sentence of 33(a).

[fol. 248] They deny the averments of subparagraph 33(b) of the complaint excepting the averments of the last three sentences thereof, which are admitted to be substantially correct.

With respect to subparagraph (c) of this paragraph, they admit that, in the suction process, the molten glass is sucked directly into the molds and that, in the gob-feeding process, the molds into which the molten glass is fed are parts of a separate machine known as a former. They deny the other averments of subparagraph 33(c) and aver that, not only "until recently" but as of present date, there were and are several types of forming machinery manufactured and sold by companies having no connection with Hartford or Lynch.

They admit that the process of annealing described in 33(d) tends to prevent the finished product from cracking or breaking when subjected to rapid changes in temperature but deny the other averments of subparagraph 33(d) of the complaint.

34. They deny the averments set forth in this paragraph.

35. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 35.

36, 37, and 38. They deny the averments set forth in these paragraphs.

[fol. 249] 39 to 46. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraphs 39 to 46, inclusive.

47. They admit the averments of this paragraphs.

48 to 50, inclusive. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraphs 48 to 50, inclusive.

51. They admit that Hocking Glass Company, whose assets were later acquired by Anchor Hocking, expressed the intention of engaging in the manufacture of heat-resisting ware in 1937; deny that it agreed, at the request of Corning, Hartford, and Owens or at the request of Owens, not to engage in such business without first obtaining the consent of defendant Corning; and state that they are without

knowledge or information sufficient to form a belief as to the truth of all other averments set forth in paragraph 51.

52. They deny the averments set forth in this paragraph.

53. They admit that, in 1915, more than half of all the glass containers produced in the United States were made on suction machines covered by patents of Owens; that, prior to 1917, Owens had issued exclusive licenses on suction machines to various manufacturers; that such licenses were restrictive as to the type of ware which the manufacturer could make; that Greenfield Fruit Jar & Bottle Company received a license to manufacture fruit jars only; and that Charles Boldt Company had a license for only certain types of liquor bottles. They deny the other averments of the paragraph and aver that the Greenfield license was [fol. 250] nonexclusive and that the Charles Boldt Company in 1919 received a license for the manufacture of types of ware other than liquor bottles.

54. They admit that, in 1915, Hartford-Fairmont put on the market a glass container feeder machine and thereafter licensed various glass container manufacturers at production royalties less than those charged by Owens but aver that such royalties charged by Hartford-Fairmont usually were for the feeders only and did not include a forming machine. They deny that the royalty payments were percentage payments and aver that they were payments for specified amounts of money per gross for specified sizes, weights, and types of ware. They admit that the initial license fee on the feeder covered by the Hartford-Fairmont patents was less than the fee on the entire Owens machine and that the Hartford feeder was less expensive to operate than the Owens machine. They admit that various licensees of Owens acquired feeder machine licenses from Hartford-Fairmont and that Owens thereafter experienced greater competition in the manufacture of glass containers. They deny all of the averments of said paragraph not hereinbefore specifically admitted to be true.

55. They admit that, in and after 1916, Owens acquired certain patents rights on gob-feeding machinery; that, in 1916, it purchased the Graham Glass Company, which owned certain feeder patent rights; that, in 1918, it acquired an option to purchase the Lott feeder inventions, on which applications for patents were then pending (which in-

ventions Owens believed and maintained were gob-feeding inventions); that, in 1921, Owens obtained a license from Hazel-Atlas under its Brookfield patents on feeding de-
[fol. 251] vices; and that one of its inventors, Soubier, filed several applications for patents covering similar feeding devices. They deny all other averments of this paragraph.

56. They admit that Hartford-Fairmont continued efforts to obtain the issuance of patents which would dominate the gob feeder machinery field and that, in 1919, Peiler, an employee of Hartford-Fairmont, filed additional applications for gob feeding patents. They admit that, sometime prior to April 7, 1924, Hartford-Fairmont purchased certain patents and applications from Howard Automatic Glass Feeder Company. They admit that in 1920 (not 1923) an action was brought against Berney-Bond Company by Hartford-Fairmont (not Hartford-Empire) alleging infringement of Hartford gob-feeding patents; that said suit was settled and that Berney-Bond took a license from Hartford; and that the other six companies named in this paragraph as Howard licensees also became licensees of Hartford.

They are without knowledge or information sufficient to form a belief as to the truth of the other averments set forth in this paragraph.

57. They admit that, in 1919 (not 1918), Owens offered to purchase Hartford-Fairmont's United States patent rights for $2,000,000 and that this offer was refused. They deny all other averments of this paragraph.

58. They admit that, in 1923, Owens sued J. T. and A. Hamilton Company, a Hartford licensee, but aver that, in this case, the issue was alleged infringement of Lott and Brookfield patents by the Hartford *feeders* (not patents) used by Hamilton.

[fol. 252] 59. They are without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph.

60. They admit that there were conflicts and disputes between Owens and Hartford as to patents and inventions relating to glass feeders and that there were negotiations between them extending over a period of years prior to April 9, 1924, but they aver that said negotiations were in-

termittent and were broken off several times. They deny all other averments of this paragraph.

61. They deny each and all of the averments of this paragraph.

62. They admit that on or about April 9, 1924, Hartford and Owens and others entered into an agreement entitled "General License Agreement"; but, because the averments are not in accordance with the agreement, they deny all other averments of said paragraph. They aver that the others besides Hartford and Owens, parties to said agreement, excepting Hartford-Fairmont, were wholly owned subsidiaries of Owens and that said agreement was canceled in 1932.

63. They admit all of the averments of this paragraph excepting the averment that the royalties payable by Owens were "at a rate no higher than the lowest rate charged to the other licensees" and aver that Owens agreed to pay Hartford's lowest rate with certain exceptions set forth in the agreement.

64. They deny all averments of this paragraph.

65. They deny the averments of this paragraph.

[fol. 253] 66. They admit that until September 30, 1935, the amounts paid by Hartford to Owens as its share of divisible income exceeded the royalties paid by Owens to Hartford but deny the remaining averments of paragraph 66 of the complaint.

67. They admit that, under the 1924 agreement, Hartford and Owens agreed to prosecute vigorously infringement of their respective patents; but they deny the remaining averments of this paragraph and aver that said agreement specifically provides that such prosecutions by each party were to be "at its own expense."

68. They deny the averments of this paragraph.

69. They deny the averments of this paragraph for the reason that they do not correctly set forth the provisions of Section 22 of the agreement of 1924 between Hartford and Owens.

They aver that, under said Section 22, the right was acknowledged in Hartford to grant licenses to others than Owens, and without the consent of Owens, under all "Li-

censed Inventions" (feeder and former machine patents, other than suction devices, as defined in Section 1(A) of said agreement), but that said right of Hartford was so limited that Hartford could grant no licenses to others with respect to "Licensed Inventions" (as defined in Section 1(A) of said agreement), contributed by Owens and its named subsidiaries, for the manufacture of containers, without the consent of Owens—except to two classes described in said Section 22, which classes are substantially set forth as "(a)" and "(b)" in this paragraph of the complaint.

They deny the averment that thereafter Hartford did not grant licenses either under its own patents or under [fol. 254] those assigned to it by Owens without first obtaining the consent of Owens.

70. They deny the averments of this paragraph.

71. They deny the averments of this paragraph.

72. They admit that, at the time of the making of the 1924 agreement, there were several companies, in no way connected with Hartford or Owens, engaged in the business of manufacturing and distributing glass-making machinery. There were also numerous manufacturers of glass containers, in no manner connected with Owens or Hartford, using glass-making machinery. They deny that, at said time, Owens was engaged in the business of manufacturing and distributing glass-making machinery. They aver that Owens and Hartford sought to induce infringers of Owens and Hartford patents to take licenses and pay royalties or desist from infringement. They deny all averments of paragraph 72 of the complaint not hereinbefore admitted.

73. They deny all of the averments of this paragraph.

74. They deny the averments of this paragraph. Further answering, they aver that two separate suits were pending, one involving two Brookfield patents and the other involving two Lott patents; that a consent decree was entered in only one of those suits, to-wit, the one involving the Lott patents; and that no decree was entered in the suit involving the Brookfield patents.

75. They admit the averments of this paragraph but aver that the purchase was made because certain of the claims of such patent applications covered certain features of the [fol. 255] Owens machines and also because certain of the

claims covered features of Hartford's machines, and that ownership and title to said applications thereby vested in Hartford.

76. They admit the averments of paragraph 76 of the complaint but aver that they took such option because both Hartford and Owens were individually in interference with the Headley & Thompson applications in the Patent Office and, if patents should issue to Headley & Thompson on the claims as made in the applications, they would dominate many of the forming machines used by Owens, and by Hartford's other licensees, and put them at the mercy of Whitall Tatum Company.

77. They deny the averments of this paragraph as pleaded and aver that in February, 1925, Owens sued Miller Glass Engineering Company and Wm. J. Miller, claiming that the Miller Feeder infringed two Lott patents owned by Owens; that, in July, 1925, Miller Glass Engineering Company sold to Hartford a license under one glass feeder patent and also in July, 1925, W. J. Miller, not the Miller Company, sold certain feeder patents and certain feeder applications, some of which were then in interference with applications of Hartford and with applications of Owens, to Hartford, all for the approximate sum of $145,000; that the said expense of such acquisition was shared by Hartford and Owens but that the expense of the litigation was not so shared; and that the suit was subsequently dismissed.

78. As to paragraph 78, these defendants answer as follows:

They admit that, in 1926, Hartford sued Lamb Glass Company, a user of Miller feeders, claiming that the Miller feed-[fol. 256] ers infringed Hartford patents; and they aver that Hartford won said suit in the United States Circuit Court of Appeals in 1932.

They admit that, in 1930 (not 1932), Hartford instituted a second suit against Lamb Glass Company, but under a Peiler patent issued to it in 1928.

They admit that these suits were settled and Lamb took a Hartford license in 1932 for the continued use of its Miller feeders.

They admit that another Miller feeder user, Atlantic Bottle Company, was served with a notice of infringement by Hartford (in 1926) and that, in 1930, the assets of At-

lantic Bottle Company were purchased by Owens; and aver that said purchase was made solely because of the desire of Owens to supplement the milk bottle business which it had started with the purchase of the assets of Berney-Bond Glass Company, and in which business it had not theretofore engaged.

They admit that, in 1935, Hartford sued the Florida Glass Company, a user of Miller feeders, and that the case was settled by Florida Glass Company's transfering title to its Miller feeders to Hartford and accepting a Hartford license after, they aver, the court, in which the suit was pending, had granted a preliminary injunction against the use of its Miller feeders by Florida Glass Company because of infringement of the Hartford patents.

They admit that Knox Glass Bottle Company, a user of Miller feeders, was notified by Hartford (in 1926) that such feeders infringed Hartford patents and that, in 1932 (as alleged in paragraph 110 of the complaint, and not in 1935) Knox Glass Bottle Company took a license from Hartford [fol. 257] permitting it to continue to use the Miller feeders.

They admit that suits were instituted by Hartford against Jeannette Glass Company and the F. E. Reed Glass Company for infringement of its patents by the use of Miller feeders, both of which suits are now pending.

They aver that, beginning in 1927 and continuing until the general license agreement of 1924 between Owens and Hartford was canceled on July 1, 1932, a portion of the expense of the suits above named which were pending prior to July 1, 1932, was shared between Owens and Hartford but the expense of such suits thereafter brought by Hartford has not been shared by Owens. They further aver that Hartford and Owens did not share the expense of any acquisition set forth in paragraph 78.

They deny all of the averments of paragraph 78 except as above specifically admitted to be true.

79. They admit that, prior to December, 1924 (averring that it was prior to April 9, 1924, the date of the general agreement between Owens and Hartford), they, Owens and Hartford, had unsuccessfully negotiated for the purchase of the Tucker, Reeves & Beatty patent rights. They aver that such negotiations were separate and competitive. They further aver that said negotiations were undertaken because of the fact that, for many years prior to April 9, 1924,

patent applications owned by Owens and patent applications owned by Hartford had been involved in lengthy and expensive Patent Office interferences, which prevented either party from getting out patents to which it felt itself entitled; that, prior to April 9, 1924, to-wit, on February 16, 1922, [fol. 258] Owens had filed three suits against The Hart Glass Manufacturing Company, alleging infringement of the Brookfield, Bock, and Lott patents of Owens by Hart through the use of Tucker, Reeves & Beatty feeders; that, previously, to-wit, in 1920, Edward S. Hart and others had sued Owens and its subsidiary, The American Bottle Company, for infringement, but that said suits were dismissed in 1921. They further aver that, on December 3, 1924, Owens brought suits against Tucker, Reeves & Beatty and against The Federal Glass Company, a user of Tucker, Reeves & Beatty feeders, for infringement of its Lott patents; that, in 1925, Hartford, with the cooperation of Owens, acquired the Tucker, Reeves & Beatty patent rights at a cost of $800,000 to each Owens and Hartford, and the suits against Hart, Federal, and Tucker, Reeves & Beatty above mentioned were dismissed; that the principal value of the purchase lay in the Tucker, Reeves & Beatty *applications* pending in the Patent Office, by the purchase of which applications the long-continued and expensive interferences above mentioned were stopped and the patents to which Owens and Hartford were severally entitled were brought to issue; and that the cost of the purchase of such patent rights were shared equally by Hartford and Owens. They deny all allegations of this paragraph not herein specifically admitted.

80. They deny the averments of paragraph 80 and aver as follows: In order to avoid any question of estoppel that might arise if Owens and Hartford should have title to the Tucker, Reeves & Beatty patents or to the licensor's interest in five licenses issued by Tucker, Reeves & Beatty five glass [fol. 259] manufacturers, to-wit, Capstan Glass Company, Hart Glass Company, Hemingray Glass Company, Federal Glass Company, and Winslow Glass Company, at the time when either Owens or Hartford should bring suit against any one of such licensees, Hartford and Owens, in 1925, immediately preceding the purchase of the Tucker, Reeves & Beatty patent rights, organized Feeder Patents Company under the laws of Delaware, each owning half of the stock of the company and each having two directors in the company. The

licensor's rights in these five licenses were thereafter transferred to Feeder Patents Company. Owens received a license from Tucker, Reeves & Beatty under their issued patents and under the patents to issue on their pending applications, and thereupon transferred the five issued patents to a nominee of Hartford and the pending applications to Hartford. Shortly thereafter, the five licensees took licenses from Hartford under Hartford patents and Owens patents, as well as the patents issued and to issue on the Tucker, Reeves & Beatty applications. Thereupon the Tucker, Reeves & Beatty licenses which had been assigned to Feeder Patents Company were assigned to Hartford, and Feeder Patents Company was thereafter dissolved and all of its assets transferred equally to Owens and Hartford.

81. They deny the averments set forth in this paragraph and on information and belief aver as follows:

In 1926, Hartford brought suit against the Nivison-Weiskopf Company for infringement of its Peiler patent 1,573,742 and other patents. Suit was also brought by Hartford in 1926 against Lamb Glass Company for infringement of patents owned by Hartford, that being the suit referred to in paragraph 78 of the complaint; and the two suits, to-
[fol. 260] gether with a third one filed against Kearns-Gorsuch Bottle Company, were heard as one case by the United States Circuit Court of Appeals of the Sixth Circuit, the decision of that court, rendered May 12, 1932, being in favor of Hartford, as reported in 58 F. (2d) 701. In the fall of 1931, General Glass Company purchased certain of the assets of Nivison-Weiskopf Company for approximately $150,000 but not pursuant to any agreement between General Glass Company and Hartford, as alleged. In the fall of 1932, after the United States Circuit Court of Appeals had rendered its decision above referred to in Hartford's favor, General Glass Company sold to Hartford certain of the patents previously owned by Nivison-Weiskopf Company, but not pursuant to any previously existing understanding or contract. On information and belief, they deny that any then existing Nivison-Weiskopf licensees were eliminated from competition or became licensees of Hartford. With respect to the allegation that in March, 1936, Rawleigh Glass Company sold to Owens its feeder equipment, they aver that Rawleigh Glass Company was a subsidiary of the T. W. Rawleigh Company, which parent com-

pany was engaged primarily in the manufacture and sale of proprietary medicines at Freeport, Illinois; that, through its subsidiary, the T. W. Rawleigh Company for a time undertook to manufacture its own containers but found that it could not do so economically; and that it closed its glass manufacturing plant and thereafter offered to sell to Owens some of the equipment so used by its subsidiary, Rawleigh Glass Company. Thereupon, Owens purchased a portion of the equipment of that company.

82. They admit that, in 1925, there was pending before [fol. 261] the United States Patent Office an application by defendant Peiler on which the so-called "stuffing" patent 1,655,391 was issued to Hartford in 1928; that the article referred to in the paragraph as the "Clarke article" was published in the July 17th, 1926, issue (not an April issue) of the *National Glass Budget*, a trade paper, under the signature of William P. Clarke, then President of the American Flint Glass Workers' Union. They admit that a representative of Hartford arranged for such publication; that a copy of the publication was filed in the Patent Office record of the Peiler application above mentioned; that, in the suit of Hartford against Hazel-Atlas, reference was made by Hartford to the Clarke article; that the Circuit Court of Appeals for the Third Circuit, in its decision in said case, reported in 59 F. (2d) 399, cited the Clarke article favorably; that no circumstances regarding the Clarke article, prior to its publication in the *National Glass Budget*, were brought to the attention of the Patent Office or of the Circuit Court of Appeals for the Third Circuit. They deny every other averment in said paragraph and aver that every statement contained in the Clarke article is true; that it was properly prepared, published, filed and referred to before the courts; that the circumstances surrounding the preparation and publication of the article have been extensively, vigorously, and heatedly presented to the Circuit Court of Appeals for the Third Circuit, to the Supreme Court of the United States, and to the United States District Court for the Southern District of Florida in later infringement cases involving the "stuffing" patent; and that none of said courts has found any impropriety whatsoever in the preparation, [fol. 262] publication, or use of the Clarke article or any misstatements or errors whatsoever in any statement in the article.

83. They deny all averments of this paragraph except as hereinafter specifically admitted to be true, and, further answering, aver as follows:

In 1926, Hartford brought suit in the United States District Court, at St. Louis, Missouri, against Obear-Nester Glass Company for infringement of two patents, to-wit, Steimer No. 1,564,909 covering feeder plunger adjustment, and Peiler No. 1,573,742 covering "phase change"; and aver that both said patents were held valid and infringed by that court, and that the decision was affirmed by the United States Circuit Court of Appeals, February 24, 1930.

The defendant, Obear-Nester Glass Company, ceased using the plunger feeder and began using an air-vacuum feeder. Consequently, in February, 1929, Hartford brought a second suit against Obear-Nester in the United States District Court, at St. Louis, claiming infringement of several Hartford patents by the use of air-vacuum feeders. The second suit was decided against Hartford.

Owens, to some extent, shared the expense of both of the above suits.

A third suit was brought by Hartford against Obear-Nester, but Owens did not share any of the expense incident thereto.

84. They admit the averments of paragraph 84.

85. They deny all averments of this paragraph except as herein specifically admitted and, further answering, aver as follows:

The Knox-O'Neill suction machine was developed by [fol. 263] Frank O'Neill for The O'Neill Machine Company and Knox Glass Bottle Company. In November, 1929, Owens brought suit against The O'Neill Machine Company for infringement of its Soubier patent 1,705,341. This action was brought and prosecuted by Owens individually and at its sole expense and not pursuant to any agreement with Hartford. Hartford was also, individually, engaged in patent litigation with The O'Neill Machine Company and with Carr-Lowrey Glass Company, a user of the Knox-O'Neill machines; but Owens had not part in said Hartford litigation.

In 1933, Hartford purchased from Frank O'Neill and The O'Neill Machine Company certain patent rights referring to glass feeders and formers; and, in the same

year, Owens purchased from Frank O'Neill and The O'Neill Machine Company certain patent rights relating to suction machines and apparatus used therewith.

They deny any part in or knowledge of any threats or coercion in connection with said purchases.

86. They deny the averments of this paragraph.

87. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 87.

88. They deny that Owens, in 1934, or at any other time, either alone or in conjunction with Hartford, attempted to purchase the business of Amsler-Morton Company; deny that Owens ever distributed lehrs or manufactured any thereof except for its own use; admit that Hartford filed suit against Swindell Brothers, Inc., claiming that the Amsler-Morton lehrs used by Swindell infringed Hartford's patents; and aver that such suit was decided in favor of Hartford, as set forth in paragraph 123 of the complaint.

[fol. 264] 89. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 89.

90. They deny the averments of this paragraph.

91. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 91.

92. They admit that on February 4, 1931, Hartford and Owens entered into an agreement amending the April 9, 1924, agreement by canceling Section 22 thereof. They deny all other averments of paragraph 92 and aver that the entire April 9, 1924, agreement was canceled on July 1, 1932.

93. They deny all allegations of this paragraph and, further answering, aver as follows: In making the February, 1931, amendment to the 1924 agreement, Owens was not motivated by "fear," but by a *desire* to remove from said agreement any provision, the legality of which might even be questioned.

94. They deny the averments of this paragraph.

95. They admit that, in 1926, Hartford brought suit against Kearns-Gorsuch Company, a subsidiary of Hazel-Atlas, in the United States District Court at Columbus, Ohio, and that beginning in 1927 Owens shared a portion of the expense of that suit up to July 1, 1932, but not afterward. They admit that Kearns-Gorsuch was a licensee of Hartford at the beginning of such suit but did not [fol. 265] use Hartford equipment. They admit that Hartford contended in that suit that Kearns-Gorsuch could not attack the validity of the patents in suit because it was a licensee of Hartford. They aver, however, that Kearns-Gorsuch was in fact allowed to attack the validity of said patents, and admit that Hartford succeeded in sustaining only some of its claims against Kearns-Gorsuch. They deny all averments of this paragraph not specifically admitted to be true.

96. They admit the averments of this paragraph.

97. They admit that Hartford and Owens entered into negotiations with Hazel-Atlas for licensing it under their patents. They deny all other averments of this paragraph for the reason that they do not fairly or properly state the purposes or effects of such licensing.

98 and 99. They admit the averments of paragraphs 98 and 99.

100 and 101. They admit the execution of a "General License Agreement" between Hartford and Hazel-Atlas under date of July 1, 1932, but aver that the allegations of these paragraphs incorrectly set forth the terms and provisions of that agreement; and all allegations thereof, except as to the execution of a contract so identified, are denied.

102 and 103. They admit the execution on July 1, 1932, of a "General License Agreement" between Hartford and Owens but aver that the terms and provisions of that agreement are incorrectly set forth in these paragraphs, and therefore deny all averments of these paragraphs except the execution of an agreement so identified. Further answering, they aver that concurrently with the execution of said General License Agreement on July 1, 1932, the [fol. 266] previously existing agreement between Hartford and Owens dated April 9, 1924, was canceled. They fur-

ther aver that the license granted by Hartford to Owens in the General License Agreement dated July 1, 1932, was for the manufacture of "glassware", with certain enumerated exclusions, and that said license was *nonexclusive* as well as nonassignable and nondivisible; and that the license granted therein by Owens to Hartford was *nonexclusive* as well as divisible and assignable. They further aver that the respective licenses granted by Hartford to Owens and by Owens to Hartford under said agreement of July 1, 1932, did not cover all of the inventions and patents of the respective parties, but were only under "Licensed Inventions" as that phrase is defined in said agreement. These respective licenses covered certain, but not all, inventions presently owned and certain, but not all, inventions acquired or controlled by either party prior to January 3, 1945.

Under the contract between Hartford and Owens dated April 9, 1924, Owens had the right of use of forty Hartford units, consisting of one feeder and one former each, free of royalty within certain limitations. Concurrently with the execution of the aforesaid General License Agreement, in 1932, the right to such free use of Hartford machines was canceled. The said General License Agreement of July 1, 1932, required Owens to pay Hartford royalties "on all merchantable glassware manufactured by Owens-Illinois during the life of this agreement, by the use of any Licensed Inventions, at Hartford's Lowest Rate as defined" elsewhere in that agreement. The "Lowest Rate" so referred to was Hartford's standard royalty rate charged others by Hartford on the type of equip-
[fol. 267] ment used by Owens-Illinois under said General License Agreement. The license so granted by Hartford to Owens did not cover "all feeding and forming machines used by Owens," but merely covered those machines in which were embodied "Licensed Inventions" as that phrase is defined in said agreement. They further aver that said General License Agreement of July 1, 1932, between said parties was terminated September 30, 1935, by the agreement referred to in paragraph 126 of the complaint.

104. Owens admits that it entered into an agreement entitled: "Suction Inventions License Agreement" with Hartford, dated July 1, 1932. Owens avers that, by section 2 of said agreement, Hartford granted Owens a *non-*

exclusive, nonassignable (except to the successors of its entire glass manufacturing business), and nondivisible (except to subsidiaries) license to use all machines involving "Suction Inventions," as that ph-ase is defined in said agreement, manufactured by or for Owens prior to July 1, 1932, and then owned by it or any of its subsidiaries, and to make and use all reproductions thereof whenever made. Owens avers that Section 3 of said agreement required Hartford, before selling or licensing the use of any "Suction Inventions" to anyone other than Owens, to offer to Owens, in writing, an option to take either a nonexclusive or an exclusive license thereunder or to purchase the inventions and the patents issued or issuing thereon. Owens, by exercising any such option, would be required to pay royalties, flat sum, or other consideration asked by Hartford or fixed by arbitration as provided for in said agreement. There are other terms and provisions in said agreement. They further aver that said [fol. 268] agreement of July 1, 1932, was canceled on September 30, 1935.

For the reason that this paragraph does not contain a complete and correct statement of the terms and provisions of said agreement of July 1, 1932, they deny all averments thereof except such as are specifically admitted to be true.

105. They deny the averments set forth in this paragraph.

106. They deny the averments set forth in this paragraph.

107. They are without knowledge and information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

108. They admit the averments set forth in this paragraph.

109. They admit that Owens accepted a reduction in the payments to it by Hartford at the time of making the agreement betwene Hartford and Owens on July 1, 1932, in order to enable Hartford to enter into the agreements of the same date with Hazel-Atlas. They deny all other averments of this paragraph. Further answering they aver that Hazel-Atlas was, immediately prior to July,

1932, and at all times since that date has been a competitor of Owens in the production and sale of glass containers, and that there has been, at all such times, free and uncontrolled competition between Hazel-Atlas and Owens in the manufacture and sale of glass containers.

110. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

[fol. 269] 111. They deny all averments of this paragraph.

112. They admit that for several years prior to 1927 Lynch Corporation marketed an automatic forming machine; and they admit that in 1927 a large percentage of the narrow-neck bottle machine formers in use were Lynch machines. They are without knowledge or information sufficient to form a belief as to the truth of the remaining averments of this paragraph.

113. They deny that between 1927 and 1932 Lynch and Hartford engaged in an extended "controversy" and aver, upon information and belief, that for a period of years prior to 1933 interferences had been declared by the Patent Office between certain Headley & Thompson applications (See also paragraph 76) and other applications for patents, including some applications owned or controlled by Lynch; that these interferences were conducted in accordance with the rules of the Patent Office and the then existing patent laws. They admit that in June, 1933, the Patent Office decided said interference with Lynch by granting priority to the Headley & Thompson applications; and that on September 19, 1933, Hartford bought the Headley & Thompson applications from Whitall-Tatum Company for $200,000. They further admit that Owens paid one-half the expense of acquiring the Headley & Thompson applications, as aforesaid. They deny all other allegations contained in this paragraph.

114, 115, 116, 117, and 118. They admit that in August, 1933, Lynch and Hartford entered into an agreement; but they are without knowledge or information sufficient to form a belief as to the truth of the other averments of these paragraphs.

[fol. 270] 119. They deny all averments contained in this paragraph.

120. They deny the averments of this paragraph. Further answering, they call attention to the allegations of paragraphs 85 and 86 of the complaint, in which 1933, instead of 1937, is pleaded as the date of the alleged O'Neill and Ed Miller Machine and Mold Company transactions. They further aver, without admitting the allegations of the complaint as to the character or significance of those transactions, that they took place in 1933; and they refer to paragraph 85 of this answer for a further statement of these defendants with respect thereto.

121. They deny all averments of this paragraph.

122. They deny all averments of this paragraph.

123. Thy deny that Owens, individually or in conjunction with Hartford, at any time attempted to purchase the business of Amsler-Morton. They deny that Owens has ever been, either alone or jointly with Hartford, in competition with Amsler-Morton Company in the manufacture of lehrs for the production of glass containers; and they deny that, either alone or in conjunction with Hartford or with anyone, Owens has ever been engaged in the business of manufacturing lehrs for the production of glass containers except for tis own use. They admit that Hartford instituted a suit against Swindell Brothers, Inc., claiming that Amsler-Morton lehrs used by Swindell Brothers infringed Hartford patents and that said suit resulted in a decision in favor of the Hartford patents and a finding that the Amsler-Morton lehrs infringed the Hartford patents. These defendants are without knowl- [fol. 271] edge or information sufficient to form a belief as to the truth of the other averments contained in this paragraph. (See also paragraph 88.)

124. They are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

125. They deny all averments of this paragraph. Further answering this and other paragraphs of the complaint with respect to lehrs, they aver as follows: Owens has had no interest at any time in the manufacture or marketing of lehrs except their manufacture for its own use. It is necessary for it to use lehrs in its manufacturing process and it has been interested in procuring the

best possible lehr equipment. Hartford, over a long period of years, has manufactured and leased lehr equipment. As early as December 1, 1925, an agreement in writing was effected between Hartford and Illinois Glass Company, under which Illinois Glass Company leased certain lehrs from Hartford. That agreement eventually inured to the benefit of Owens-Illinois Glass Company after the acquisition of certain of the assets of Illinois Glass Company by the Owens Bottle Company (predecessor in name of Owens-Illinois Glass Company).

Likewise, the Berney-Bond Company obtained a license from Hartford to use Hartford lehrs, on January 18, 1927, and that license passed to Owens in 1930 when Owens purchased the assets of the Berney-Bond Company.

On January 2, 1926, an agreement was effected between Hartford and Owens Bottle Company under which Owens Bottle Company leased certain lehr equipment manufactured and controlled by Hartford.

[fol. 272] Throughout their experiences as glass manufacturers, Owens Bottle Company and Illinois Glass Company had spent much time and had expended very considerable sums of money developing lehr equipment; and applications for patents on the equipment so developed had from time to time been filed in the Patent Office. The filing of these applications resulted in interferences with applications filed by Hartford and others. Certain of these interferences were submitted to arbitration; and, as a result of the arbitration and in accordance with it, Owens and Hartford entered into an agreement dated September 13, 1929, whereby Hartford granted to Owens a license to make, use, and sell inventions set forth in one of the claims involved in said interference.

On June 12, 1930, Owens and Hartford entered into an agreement for the purpose of terminating interference, involving one of the so-called Mulholland applications, one of the so-called Nesbitt applications, and an application of one Amsler.

Under this agreement, Hartford granted to Owens a nonexclusive, nondivisible license under any patent issuing on the Mulholland application. Owens granted to Hartford a nonexclusive license on patents issuing on the Nesbitt application. On November 12, 1930, Hartford and Owens, by agreement, settled the interference which involved the aforesaid Amsler application; and, by that

agreement, Hartford granted to Owens a nonexclusive, nondivisible license for the United States, covering any claims on the Amsler application involved in interference which might be determined in favor of the Amsler application. Simplex Engineering Company, the owner of the Amsler application, consented to this agreement.

[fol. 273] On February 18, 1931, Owens and Hartford entered into an agreement which provided, without disturbing their previous agreements covering the use of lehrs, that Hartford should release Owens from all claims of infringement with respect to lehrs theretofore built and then in the possession of Owens. By that agreement, Hartford also granted to Owens a nonexclusive license to use, in Owens' factories, all inventions covering lehrs developed by Hartford prior to 1941 for use in connection with lehrs in which the heat used was produced substantially entirely by electricity. By the same instrument, Hartford granted to Owens a nonexclusive license to July 1, 1941, to use gas and oil fired lehrs embodying Hartford inventions, with the provision that Owens should pay to Hartford royalties therefor at Hartford's standard rate. By the same instrument, Owens granted to Hartford the exclusive right to make, use, and sell Owens' inventions relating to lehrs then or thereafter developed by Owens prior to July 1, 1941.

On September 30, 1935, Hartford and Owens canceled all then existing agreements with respect to lehrs and, on October 1, 1935, rewrote their agreements into one instrument called "Consolidated Lehr Agreement." That "Consolidated Lehr Agreement" did not materially change the sum total of the agreements previously existing between them, but, for convenience, did consolidate into one instrument what previously had been contained in several instruments.

All of the foregoing contracts between Owens and Hartford with respect to lehrs were made in the usual course of business and for the sole and necessary purpose, so far as Owens was concerned, of enabling it to provide for [fol. 274] its own use the best and most modern lehr equipment. Said agreements were not made for the purpose of achieving a monopoly or a dominating position with respect to patents covering lehrs. Owens has never, directly or indirectly, shared or benefited from royalties or license fees received by Hartford on lehrs or lehr equip-

ment. At the time said agreements were made, Owens was not engaged in, or interested in, developing or manufacturing lehrs for use by anyone other than itself. Furthermore, there were at all such times many manufacturers of lehrs from whom lehr equipment could be purchased; and the aforesaid agreements did not have the effect of achieving a virtual monopoly or a dominating position with respect to patents covering lehrs.

126 and 127. They admit that on September 30, 1935, an agreement was executed between Owens and Hartford, and that on October 1, 1935, several agreements were executed between Hartford and Owens, identified substantially as set forth in these paragraphs. They aver, however, that the terms and effect of said agreements are incompletely and incorrectly set forth in these paragraphs; and all other averments thereof are therefore denied.

Further answering, they aver that the agreement referred to in paragraph 126, dated September 30, 1935, between Owens and Hartford, entitled "General License From Owens-Illinois Glass Company and Owens-Illinois Pacific Coast Company To Hartford-Empire Company," specifically canceled all then existing contracts, licenses, and agreements between Owens and Hartford and be-
[fol. 275] tween Owens-Illinois Pacific Coast Company (a subsidiary of Owens) and Hartford. The termination of previous agreements effected by the aforesaid agreement of September 30, 1935, included a termination of Owens' right to one-third of Hartford's yearly income from "Licensed Inventions." Under that agreement, Owens and its subsidiary, Owens-Illinois Pacific Coast Company, granted Hartford a divisible and assignable license, which was also *nonexclusive*, without royalty to make and use all feeding and forming machines of Owens and its subsidiary owned or acquired prior to January 3, 1945; but the license so granted applied only to "Licensed Inventions" as defined in said agreement, which definition excluded suction inventions. As compensation to Owens for the rights and licenses granted to Hartford under this agreement, Hartford agreed to and did pay to Owens $2,500,000. Under and by virtue of this agreement, Owens ceased to receive any payments whatever from Hartford other than the aforesaid lump sum purchase price of $2,500,000; and thereafter Owens had no interest, directly or indirectly, in the income or earnings of Hartford.

Under date of October 1, 1935, Owens and Hartford executed five agreements as follows:

(1) "General License From Hartford-Empire Company To Owens-Illinois Glass Company." Hartford granted Owens a nonassignable and nondivisible, but also *nonexclusive*, license to make and use (but not to vend) Hartford feeding and forming machine inventions, for the manufacture of glassware (subject to certain exclusions), owned or acquired prior to January 3, 1945, at "Hartford's Lowest Rates," as that term is defined in said agree-[fol. 276] ment. The term "Hartford's Lowest Rates," as defined in said agreement, does not mean the lowest rate accorded to *any* other licensee.

(2) "Suction Inventions License Agreement Between Hartford-Empire Company And Owens-Illinois Glass Company." Owens bottle-blowing machines depended primarily upon suction inventions; and, inasmuch as the ability of Owens to operate its machines successfully depended upon its continued use of suction inventions, Owens, to protect itself, procured this agreement with Hartford, who owned or claimed certain suction inventions. Under this agreement, Hartford granted Owens a nonassignable and nondivisible, but also *nonexclusive*, license to make and use those Hartford "Suction Inventions" (as defined therein) owned or acquired prior to January 3, 1945.

(3) "Consolidated Lehr Agreement." The history of lehr development by Owens and the circumstances leading up to the execution of this agreement are outlined in paragraph 125 above. As stated in that paragraph, all prior agreements having been canceled, this was not a "Supplementary Agreement" as alleged. Under it, a nonexclusive, divisible license was granted from Owens to Hartford to make, use, and sell lehrs under all patents of Owens.

(4) "Consolidated Feeder and Former License and Lease Agreement." This agreement was supplementary to the above-described general license from Hartford-Empire to Owens-Illinois. It simply sets forth the *form* of lease and license to be given by Hartford to Owens with respect to each feeder and forming machine which it should deliver to Owens under the general license. This form con-[fol. 277] tained substantially the same terms and conditions as were contained in Hartford's standard lease con-

tract relating to similar mechanisms, and gave no advantage to Owens over other licensees.

(5) "Consolidated Stacker and Conveyor Agreement." The Consolidated Stacker and Conveyor Agreement covered subsidiary mechanism, to-wit, the conveyors which carried the glassware from the forming machine to the lehr, and the stacker which transferred such ware from the conveyor to the lehr. Owens had previously acquired a number of these conveyors and stackers from Hartford under individual leases and licenses, all of which, however, had been canceled September 30, 1935; and it was thus necessary to have an agreement which covered all of those mechanisms and to provide the terms upon which the conveyors or stackers might be had from Hartford in the future.

Owens never had any controlling patents on conveyors or stackers and never built any conveyors or stackers except for its own use, and the use of a few of its foreign licensees.

The foregoing agreements are the only agreements that are now or have been in force since October 1, 1935, between Owens and Hartford, except an agreement made on October 25, 1939, which settled a dispute as to the construction to be placed upon certain paragraphs of the aforesaid "Consolidated Lehr Agreement" and the amount of royalties then due from Owens to Hartford. The disputed construction was with respect to the point at which an electric lehr (free of royalty), using supplementary gas or oil heat, ceased to be an electric lehr free of royalty.

[fol. 278] 128. They deny all averments of this paragraph.

129. They admit that in 1908 Owens granted Thatcher an exclusive license for the use of the Owens suction machine in the production of milk bottles. They deny that Owens guaranteed that it would not license other milk bottle manufacturers on this machine except to the extent that such guarantee is inherent in such exclusive license.

They further aver that the said license from Owens to Thatcher executed in 1908 was canceled by the parties thereto on July 23, 1930, and that since that time there has been no license contract between Owens and Thatcher.

130. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

131. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

132. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

133. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

134. They admit that in 1930 Owens purchased the assets of Berney-Bond Glass Company, but deny that it acquired Berney-Bond Glass Company if the language used in the petition implies anything other than the purchase of assets.

Owens denies that in 1930 Berney-Bond Glass Company had an unrestricted license to manufacture milk bottles on [fol. 279] Hartford feeders. On the contrary, Berney-Bond Glass Company had a limited license from Hartford for a period of eight years, beginning February 15, 1926, with the right to renew for an additional eight-year period, which right was not exercised. They, further answering, aver that Owens had not manufactured milk bottles on its machines, or any other machines, prior to 1930, and that it entered the milk bottle field with its purchase of the assets of Berney-Bond Glass Company.

135. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

136. They are without knowledge or information sufficient to form a belief as to the truth of the averment set forth in this paragraph.

137. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

138. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

139. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

140. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

141. They deny that Hartford's refusals to grant licenses, as alleged in this paragraph, were made with the knowledge, consent, or approval of Owens, or at its request to effect its own protection. They reaffirm in this connection the allegations, by them made in connection with para- [fol. 280] graph 134, that Owens was not in the milk bottle field prior to its purchase of the assets of Berney-Bond Glass Company in 1930. They are without knowledge or information sufficient to form a belief as to the truth of the other averments of this paragraph.

142. They deny all averments set forth in this paragraph.

143. They deny all averments set forth in this paragraph.

144. They deny all allegations of paragraph 144 for the reason that the paragraph does not accurately set forth the history of the relations between Owens and Ball Brothers with respect to licenses for the manufacture of domestic fruit jars. Further answering, they allege that, on January 2, 1909, Owens granted a license to Louis Hollweg to use Owens machines (which embodied suctions inventions) for the manufacture of domestic fruit jars. On November 15, 1909, that license was assigned by Hollweg to Greenfield Fruit Jar & Bottle Company. On November 17, 1909, the aforesaid license was rescinded and a new license was granted for the same purposes to Greenfield Fruit Jar & Bottle Company. On January 23, 1915, at the joint request of Greenfield Fruit Jar & Bottle Company and Ball Brothers, Owens consented to the assignment of the then existing license from the Greenfield Fruit Jar & Bottle Company to Ball Brothers. That license expired November 1, 1924; and, at the request of Ball Brothers, a new license was issued to it by Owens under date of November 2, 1924, giving it the exclusive right to use the Owens suction machine for the purpose of manufacturing

[fol. 281] fruit jars. Prior to that date, the foregoing were the only licensees of Owens with respect to the manufacture of fruit jars; and there had never been more than one such license outstanding at any one time.

145. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

146. They admit that Ball Brothers did not at any time prior to March 25, 1933, have a license from Hartford to use machinery covered by patents owned by Hartford. They further admit that prior to 1932 Ball Brothers used certain machinery in the manufacture of fruit jars which Ball Brothers claimed were outside the scope of Hartford patents and inventions. They are without knowledge or information sufficient to form a belief as to the truth of the other averments set forth in this paragraph.

147. They admit that, prior to 1933, Hartford and Ball Brothers negotiated with respect to license agreement, but they are without knowledge or information sufficient to form a belief as to the truth of the other averments of this paragraph.

148. They admit that prior to 1933, but only since 1929, Owens competed with Ball Brothers and others in the manufacture of fruit jars, but deny that Owens was a "principal competitor" of Ball Brothers. They admit that Hazel-Atlas also manufactured fruit jars; that Salem Glass Works, General Glass Company and Gayner Glass Works had some kind of license arrangement with Hartford; and that Knox Glass Bottle Company and Brockway Glass Company manufactured friut jars, but they aver [fol. 282] that there were other large manufacturers of fruit jars, including Alexander H. Kerr Glass Company and F. E. Reed Glass Company.

They are without knowledge or information sufficient to form a belief as to the truth of the other averments of this paragraph.

Further answering they aver that Owens was not in the business of manufacturing fruit jars until 1929, when it acquired the assets of Illinois Glass Company, which company had a license from Hartford.

149. They deny knowledge of the existence of any conspiracy, monopoly, or combination referred to in this

paragraph as "hereinbefore alleged," or of any other character or description, to which Hartford may have desired to induce Ball Brothers to become a party. They are without knowledge or information sufficient to form a belief as to the extent, if at all, to which Hartford refused to grant others the right to manufacture fruit jars, or as to its motive in so refusing, if it did refuse to grant such rights, or as to the extent of Ball Brothers' interest in acquiring license rights from Hartford or as to the reasons for such interest on the part of Ball Brothers.

150. They admit that in August, 1932, Knox Glass Bottle Company and its affiliate companies obtained a license from Hartford which did not permit Knox to manufacture fruit jars by the use of Hartford's feeders, and that thereafter Knox continued to produce fruit jars on other machines, known as the Knox-O'Neill machines.

151. They deny any part in, or knowledge of the existence of, any conspiracy, monopoly, or combination in restraint of trade referred to as "hereinbefore alleged," or otherwise to be described or identified, with respect to the manufacture and distribution of fruit jars.
[fol. 283] They are without knowledge or information sufficient to form a belief as to the other averments set forth in this paragraph.

152. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

153. They deny any part in, or knowledge of the existence of, any conspiracy, monopoly, or combination in restraint of trade referred to as "hereinbefore alleged," or otherwise to be described or identified, with respect to the manufacture and distribution fruit jars.
They are without knowledge or information sufficient to form a belief as to the other averments set forth in this paragraph.

154. They admit that on Mach 25, 1933, Hartford entered into an agreement with Ball Brothers; that Ball Brothers paid Hartford $400,000; that Hartford paid $100,000 to General Glass Company for reacquiring from General Glass Company the Hartford license to it to manufacture fruit jars; and that Ball Brothers agreed to thereafter pay royal-

ties on the use of feeders which Hartford claimed infringed its patents. They deny all other averments of this paragraph.

155. They admit that on March 25, 1933, an agreement was entered into between Hartford and Ball Brothers; but they do not know the terms of that agreement with respect to the matters alleged in this paragraph, and, therefore, aver that they are without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph.

156. They deny all averments contained in this paragraph.

[fol. 284] 157. They deny that Owens has not produced more than 100,000 gross of fruit jars in any year since 1933. They are without knowledge or information sufficient to form a belief as to the truth of the other averments set forth in this paragraph.

Further answering, particularly with respect to paragraphs 156 and 157, they aver that Owens began manufacturing fruit jars in 1929, at which time it became possessed of a license previously granted by Hartford to Illinois Glass Company, which license was dated June 22, 1926; that prior to 1929, at which time Owens Bottle Company acquired the assets of Illinois Glass Company, Illinois Glass Company had sold its entire output of fruit jars through Cupples Company of St. Louis, Missouri; and that after Owens acquired the assets of Illinois Glass Company it continued the policy so established of selling fruit jars only to and through Cupples Company, and has continued to sell to and through Cupples Company as many domestic jars as Cupples has been able to dispose of. They further aver that the production and sale by Owens of fruit jars is not, and has not been at any time since 1933, dependent on any understanding or arrangement with Hartford, Hazel-Atlas, or Ball Brothers, but are dependent entirely upon the ability of Cupples Company to sell its fruit jars to the consuming public. With further reference to the averment that Owens has not produced more than 100,000 gross of fruit jars per year since 1933, they aver that Owens has continuously cooperated with Cupples Company in vigorous sales efforts, and that by such efforts it has not been able to sell as many as 100,000 gross of fruit jars per year since 1932, except that in the year 1935 it sold 103,110 gross.

The sales of domestic fruit jars made by Illinois Glass [fol. 285] Company during the years 1927 and 1928 and the sales of such jars made by Owens-Illinois in subsequent years are as follows:

1927	45,450
1928	61,867
1929	90,000
1930	81,259
1931	205,230
1932	123,651
1933	89,581
1934	78,598
1935	103,110
1936	66,162
1937	95,530
1938	44,641
1939	57,123

158. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

159. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

160. They are without knowledge or information sufficient to form a belief as to the truth of the averments with respect to the alleged conduct of Hartford, but they deny that Owens was a party to or had knowledge of any action on the part of Hartford to restrict the manufacture of fruit jars for the benefit of Owens.

161. They are without knowledge or information sufficient to form a belief as to the truth of any of the averments contained in this paragraph, but they specifically deny that Owens had knowledge of or participated in the refusal by Hartford of licenses for the purpose of protecing Owens from competition.

[fol. 286] 162. They are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

163. They deny all averments of this paragraph in so far as they relate to or affect defendant Owens, and in so

far as they presume the existence of a conspiracy, monopoly, or combination in restraint of trade to which Owens was a party or of which Owens had knowledge. They are without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph in so far as they relate to others than the defendant Owens.

164. They deny all averments of this paragraph.

165. They admit that for a number of years prior to 1931 there were various smaller manufacturers of a general line of glass containers in competition with Owens, and they aver that such competition by smaller companies has continued at all times since 1931. They deny the existence at any time of any group known in the industry as the "Levis Group." They admit that from 1929 to the date of dissolution of Illinois Glass Company it, the said Illinois Glass Company, owned and held certain corporate shares of Owens; but they deny that said shares were owned by any individuals until the dissolution of Illinois Glass Company in 1938, at which time its holdings of Owens shares were distributed pro rata to its own shareholders. They deny that any group who directly or indirectly held stock interests in Owens were desirous of controlling certain or any of the competitors of Owens. Reaffirming their denial of the existence of a "Levis Group," they admit [fol. 287] that prior to 1931 Illinois Glass Company owned blocks of stock in Hazel-Atlas and in Thatcher; but they aver that Illinois Glass Company never at any time owned as much as 10 per cent of the stock of either of said companies. Reference is made to paragraph 12 of this answer for further allegations concerning the investments of Illinois Glass Company, all of which controvert the statements made in paragraph 165 of the complaint. They deny all other allegations of this paragraph.

166. They admit all averments of this paragraph, except that they do not know whether or not Turner Glass Company was put into receivership by Hartford for nonpayment of royalties; and they therefore deny that averment.

167. They deny that Owens had any part in arranging for the reorganization of Turner Glass Company or the organization of General Glass Company, or the acquiring of the assets of Turner Glass Company by General Glass Company. They aver that Turner Glass Company was in

bad financial condition and was indebted to Hartford for royalties in a substantial amount, in which Owens had a one-half interest under the 1924 agreement between Owens and Hartford; that Owens and Hartford were in communication with each other with respect to such royalties; and that Wm. E. Levis introduced Isaac J. Collins, President of The Hocking Glass Company, and H. C. Mandeville, President of Thatcher, to one Woodruff, a representative of the Turner bondholders, but did nothing further with respect to Turner except to inquire from time to time of Hartford as to the prospects of collecting the royalties above mentioned. They admit that one-half of the stock [fol. 288] of General Glass Company was acquired by Hocking Glass Company and the other one-half by Thatcher; that in 1935 Thatcher sold its interest in General Glass Company to Hocking Glass Company; and that General Glass Company was then dissolved, but, on information and belief, they aver that it was not dissolved until December, 1937. They are without knowledge or information sufficient to form a belief as to the truth of the other averments contained in this paragraph.

168. They admit that in 1931 (not 1932) General Glass Company purchased certain of the assets of Nivison-Weiskopf Company, but they deny that that purchase was made at the request of Hartford and Owens or that Owens was in any way responsible for such purchase being made. They are without knowledge or information sufficient to form a belief as to the truth of the other averments set forth in this paragraph.

169. They deny that Owens, either individually or in conjunction with Hartford, induced Hocking Glass Company and Anchor Cap Company to merge; and they deny any part in, or knowledge of the existence of, any conspiracy, monopoly, or combination in restraint of trade, as referred to in this paragraph, and deny the committing of any acts on the part of Owens in furtherance of any conspiracy, monopoly, or combination in restraint of trade. They deny that any of these answering defendants aided or financed said merger; deny that the Levis group aided and financed such merger; deny that there is or was any group known in the industry as the "Levis group;" and aver that Illinois Glass Company, prior to such merger, purchased a one-eighth interest in the common capital stock

[fol. 289] of The Hocking Glass Company for $1,125,000. They further aver that The Hocking Glass Company and General Glass Company, and also Salem Glass Company and Capstan Glass Company, which were the glass container manufacturing subsidiaries of Anchor Cap Corporation, were all licensees of Hartford long prior to such merger. They admit that Anchor-Hocking was, from the time of its creation by said merger, a large manufacturer of glass containers in the United States; but they are without knowledge or information sufficient to form a belief as to its relative size in the glass container industry. They deny any knowledge of any conspiracy, monopoly, or combination in restraint of trade which Anchor-Hocking may have joined.

170. They admit that in 1919 Glass Container Association was organized as a trade association for the glass industry for the purposes, among others, of compiling technical information, publicizing the industry, aiding in the improvement and quality of glass, and to perform certain services with respect to legislation, but not for the purpose of "influencing" legislation; that from 1920 to 1928 one I. J. Jennings was employed by said Association and was vested with some powers of management; and that since 1928 Charles R. Stevenson and Emory C. Ackerman have held managerial offices in said Association. They deny all averments of this paragraph with respect to Stevenson Company, and all other averments thereof not specifically admitted to be true.

[fol. 290] 171. They admit all of the averments of this paragraph, except that they deny that all but two of the glass container manufacturers of the United States are members of the Association and are actively interested in the work of the Association.

172. They deny that prior to 1928, or at any other time, the Association's activities were limited to the collection and dissemination of statistical data and the issuance of advertising matter regarding the use of glass, but admit that, both prior to 1928 and since that time, the Association has engaged, among others, in those activities. They deny all other averments contained in this paragraph.

173. They deny that any one of these answering defendants, or that Stevenson Corporation, Stevenson, or Acker-

man, to their knowledge, has, by any of the means or methods stated in this paragraph or otherwise, fixed, maintained, or enforced arbitrary, artificial, or noncompetitive prices for any types of glass containers, or has prevented normal price changes; and they aver that competitive prices have at all times existed in the sale of glass containers.

174. They deny that Hartford and Owens jointly or that Owens individually has requested the Association to dissuade new firms from entering the glass container industry or that the Association has, to their knowledge, so dissuaded new firms from entering that industry. Further answering, they aver that from time to time Owens has sent to the Association communications received by Owens from individuals requesting information with respect to the glass container industry, and that Owens has, in transmitting said communications, suggested that they be answered by the Association.

[fol. 291] 175. They deny that since 1928, or at any other time, they, or either of them, have been parties to, or have had knowledge concerning the existence of, any conspiracy, monopoly, or combination in restraint of trade, or that they have participated in any acts which created, maintained, strengthened, or extended any conspiracy, monopoly, or combination in restraint of trade.

176. They deny all averments contained in this paragraph.

177. They deny all averments contained in this paragraph.

178. They deny all averments contained in this paragraph.

179. They deny all averments contained in this paragraph. Further answering, they deny that the prices in the glass container industry have at any time been artificially high or that noncompetitive prices have existed in the glass container industry. On the contrary, they aver that there has been open competition in the manufacture of glass containers; that the prices obtained for glass containers have been determined by vigorous competition; and that over a long period of years the general trend of prices of glass containers has been downward.

180. Referring to the first sentence of this paragraph, they deny that high prices have existed in the glass container industry. They admit the existence of price leadership in the sense that certain manufacturers specialized in certain lines of glass containers and that other manufacturers thereof were influenced by the prices charged by such manufacturers. They deny that any system of price leadership was established by agreement or maintained [fol. 292] and enforced by concerted action. In so far as "price leadership" exists in the industry, it exists because certain manufacturers are particularly skilled and experienced in the manufacture of certain lines of glassware and are therefore recognized as the leaders in those respective fields. "Price leadership" is, to some extent, a natural incident to leadership in manufacturing and, in such sense, it may be said that the respective manufacturers named in this paragraph are the recognized price leaders in their respective fields. They deny all averments of the last sentence of this paragraph, and all other averments of this paragraph except to the extent hereinabove admitted.

181. They deny all averments contained in this paragraph in so far as they relate to the defendant Owens and aver that they are without knowledge or information sufficient to form a belief as to the truth of the averments in so far as they relate to Hartford and Corning.

182. Upon information and belief, they admit the averment contained in the first sentence of this paragraph, but only in so far as they relate to machinery and equipment covered by Hartford licenses. They are without knowledge or information sufficient to form a belief as to the truth of the other averments set forth therein.

183. They admit that, in December, 1928, a representative of Owens entered the plant of Knox Glass Bottle Company, at Knox, Pennsylvania, without the consent of that company, and that at that time Knox Glass Bottle Company was not a licensee of either Hartford or Owens. They deny all other averments contained in this paragraph, [fol. 293] in so far as they relate to defendant Owens, and aver that they are without knowledge or information sufficient to form a belief with respect to the truth of the averments set forth therein in so far as they relate to Hartford.

Further answering, these defendants aver that the visit of Owens' representative to said Knox Glass Bottle Company plant was occasioned by the following facts: At that time, to-wit, December, 1928, said Knox Glass Bottle Company was operating in said plant a suction machine which was an alleged invention of Frank O'Neill and O'Neill Manufacturing Company; upon the information it possessed, Owens believed that said machine infringed certain of its patents; Owens had so advised O'Neill and said Knox Glass Bottle Company and had requested the right to see the machine for the purpose of determining whether or not there was such infringement, but its request had been refused; a representative of Owens then entered the factory of said Knox Glass Bottle Company, by the usual means of ingress thereto, in order to determine whether or not there was a basis for an infringement suit, regarding that particular machine, and to acquire the information which Owens was required by law to have in order to make a claim of infringement. After said representative had stood near said machine to observe it for a period of less than five minutes, he was observed and recognized by an executive of Knox Glass Bottle Company who thereupon objected to his presence; thereupon, at the invitation of said executive, said Owens representative proceeded to the office of said executive where they discussed the question of alleged infringement.

[fol. 294] 184. They are without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph except that they admit that Crown Cork and Seal Company was not a licensee of Owens.

185. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph except that they admit that Capstan Glass Company was not, in 1933, a licensee of Owens.

186. They deny all averments contained in this paragraph. Further answering, they aver that in 1936 an attorney hired by a subsidiary of Owens, to protect their rights in connection with tumbler burn-off machines, made an investigation to determine whether the Knox Glass Bottle Company was infringing patents covering such machinery; that such investigation was made in a manner consistent with customs long standing with respect to in-

vestigating possible patent infringements and was made for the purpose of procuring information which, under the law, a plaintiff is required to possess before a claim of infringement can be asserted.

187. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

188. They deny that Owens has made "excessive profits" and aver that they are without knowledge or information sufficient to form a belief as to the truth of the averment that "excessive profits" have been made by the other defendants named in this paragraph. Further answering, they deny participation in, or knowledge of, any conspiracy, [fol. 295] monopoly, or combination in restraint of trade, whether it is referred to as "hereinbefore alleged" or otherwise. They deny "control and domination" by Owens individually or with Hartford over patents on glass-making machinery. They deny any "licensing policy" on the part of Owens, either individually or with Hartford, which resulted in the making of excessive profits as in this paragraph alleged. They deny that excessive profits have resulted from "license agreements" to which Owens was a party and they deny the existence of "artificially high," "uniform," or "noncompetitive" prices for any types of glass containers manufactured or sold by Owens; and, on the contrary, aver that Owens has at all times sold glass containers, manufactured by it, at highly competitive prices which fluctuated with supply and demand.

189. On information and belief, they admit the averments of this paragraph.

190. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

191. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

192. They admit that, for many years, Owens has had net earnings; but, for want of a definition of the word "substantial," they deny that its earnings are rightfully so designated. They admit that the other averments set

forth in this paragraph are a substantially correct statement of the facts.

193. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

[fol. 296] 194. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

195. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

196. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

197. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

198. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

199. They are without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph in so far as they relate to Hartford. They deny all averments contained in this paragraph in so far as they relate to Owens. Further answering, they aver that Owens has transferred title to certain bottle-blowing machines embodying inventions owned by Owens. They further aver that, in so far as Owens has leased machines, such leases have been executed in strict accordance with law and the common practice of protecting the owner of patented machinery.

[fol. 297] 200. They deny all of the averments set forth in this paragraph; but they aver that they are not informed by the averments of the complaint, or otherwise, as to what is meant by the "policy" of defendants Hartford and Owens with regard to the distribution of glassware machinery. Their denial of the averments of this paragraph is therefore not to be construed as an admission of the existence of any policy whatever with regard thereto. They further deny participation in, or knowledge of, or any act

upon their part in furtherance of, any conspiracy, monopoly, or combination in restraint of trade, whether identified as "hereinbefore alleged" or otherwise. They further deny the averment, expressed or implied, in this paragraph that Owens, individually or in conjunction with Hartford, has formulated and carried out any "policy" with regard to the distribution of glassware machinery "with a view to furthering," or which would further, any conspiracy, monopoly, or combination in restraint of trade.

201. They deny all the averments set forth in this paragraph.

202. They admit that Owens in some cases, has required its licensees to agree in the license not to contest the validity of the patents under which they were licensed; but they aver that such agreement was merely a verbal expression of a legal principle, inherent in a license under a patent, and continued in effect only so long as the licenses remained in effect and the respective licensees were enjoying the benefits thereof. The agreement not to contest the validity of patents issued subsequent to the date of the license applied only to patents covered by the license. They are without [fol. 298] knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph in so far as they relate to Hartford.

203. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

204. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

205. They deny all of the averments set forth in this paragraph; but they aver that they are not informed by the averments of the complaint, or otherwise, as to what is meant by the "policy" of defendants Hartford and Owens with regard to the manufacture and distribution of glass products manufactured on machinery licensed by Hartford or Owens. Their denial of the averments of this paragraph is therefore not to be construed as an admission of the existence of any policy whatever with regard thereto. They further deny participation in, or knowledge of, or any act upon their part in furtherance of, any conspiracy, monopoly, or combination in restraint of trade, whether identified

as "hereinbefore alleged" or otherwise. They further deny the averment expressed or implied in this paragraph that Owens, individually or in conjunction with Hartford, has formulated and carried out any "policy" with regard to the manufacture or distribution of glass products "with a view to furthering," or which would further, any conspiracy, monopoly, or combination in restraint of trade.

[fol. 299] 206. They deny all of the averments set forth in this paragraph.

207. They admit that under the general license agreement from Hartford to Owens dated October 1, 1935, and referred to and described in paragraph 127, Owens is denied the right to use the "Licensed Inventions," covered thereby, in the manufacture of certain glassware, including, among others, bulbs, certain heat-resisting ware, and certain types of pressed and blown glassware. They deny that under an agreement of 1933, or any other agreement whatsoever, Owens is limited with respect to the production of fruit jars or the quantity of fruit jars that may be produced under its license from Hartford; and, on information and belief, it denies that Hazel-Atlas is limited by an agreement of 1933, or otherwise, with respect to the quantity of fruit jars which it may produce under its license from Hartford. They are without knowledge or information sufficient to form a belief as to the truth of the other averments set forth in this paragraph.

208. They are without knowledge or information sufficient to form a belief as to the averments set forth in this paragraph, except that in the last paragraph of Schedule B, attached to the general license from Hartford to Owens dated October 1, 1935, Hartford represents that it, at that time, had certain outstanding exclusive licenses.

209. They deny all of the averments set forth in this paragraph. Further answering, they aver that the terms used in the averments of this paragraph are vague, ambiguous, and of uncertain meaning, making other than denial impossible.

[fol. 300] 210. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph, except that, upon information and belief, they admit that Hartford has issued licenses containing certain restrictions, the exact kind and character of which are unknown to these answering defendants.

211. They deny that Owens, under its existing license from Hartford executed October 1, 1935, is unlimited as to the type or kind of glassware that may be manufactured by it. They are without knowledge or information sufficient to form a belief as to the terms of any license now existing from Hartford to Hazel-Atlas or any others, except as to the terms of the license granted by Hartford to Hazel-Atlas July 1, 1932, which, if still in force, is not unlimited as to type or kind of glassware that may be manufactured thereunder.

212 to 216, inclusive. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in these paragraphs except as to the statement concerning the Owens-Illinois Pacific Company's license contained in the last subparagraph of number 216, and appearing on page 88 of the complaint. That statement they deny and with respect to it aver as follows:

There has never been, to the knowledge of these defendants, any company to be identified as Owens-Illinois Pacific Company. Owens-Illinois Pacific Coast Company was not in existence in 1930. It came into existence as a new corporation in 1932 (having been organized at that time by Owens-Illinois Glass Company as a subsidiary to receive the assets of Illinois Pacific Coast Company, which were [fol. 301] then purchased by Owens-Illinois Glass Company).

Upon information and belief, these defendants aver that, in August, 1930, Illinois Pacific Coast Company, in which Owens had no interest, assigned to Hartford certain patent rights subject to a shop right of Illinois Pacific Coast Company thereunder. Under date of July 30, 1931, another agreement was made, under which Illinois Pacific Coast Company assigned to Hartford a certain Henry and Noble application, serial number 547,802, subject to a shop right of Illinois Pacific Coast Company thereunder. In each of said agreements, there was a limitation that Hartford would not furnish any equipment for use west of the Rocky Mountains embodying the inventions covered by the patents and applications assigned, except Hartford's standard equipment. In May, 1932, when Owens-Illinois Glass Company organized Owens-Illinois Pacific Coast Company, as

above stated, the above mentioned agreements were assigned to Owens-Illinois Pacific Coast Company.

The limitation upon the right of Hartford to supply machines for the manufacture of hollow glassware in that part of the United States west of the Rocky Mountains, therefore, arose by way of reservation initiated by Illinois Pacific Coast Company, which was, at the times the reservations were made, the owner of the patent rights involved.

By the agreement dated September 30, 1935, entitled: "General License from Owens-Illinois Glass Company and Owens-Illinois Pacific Coast Company to Hartford-Empire Company," referred to in paragraph 126 and 127 of this answer, all contracts, licenses, and agreements between [fol. 302] Hartford and Owens-Illinois Pacific Coast Company were terminated.

217. They deny all averments set forth in this paragraph in so far as they relate to the defendant Owens. Further answering, they deny the averment, expressed or implied, that Owens, either individually or in conjunction with others, exercised or possessed monopolistic control or domination of the glassware industry or any part thereof, or by any act directly or indirectly prevented or suppressed substantial competition in the sale, in interstate commerce, of glassware machinery or glassware products manufactured therefrom. They further deny the existence of monopolistic control or domination of the glassware industry by the defendants named in this paragraph or by any others. They are without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph except as hereinbefore set forth.

218. They are without knowledge or information sufficient to form a belief as to the truth of the averments set forth in this paragraph.

219. They deny that Hartford and Owens own, control, or dominate any patents in common, or that they have any common interest in any patents except to the extent that such interest may arise from licenses, granted by one to the other, as elsewhere in this answer described; and they deny that Hartford and Owens, jointly or in common, have ever owned or licensed any machines. They aver

[fol. 303] that Owens owns approximately 150 unexpired patents covering furnaces and feeders and such apparatus as may be used in the conditioning of glass and delivering it to a forming machine, approximately 295 unexpired patents covering forming machines and methods of shaping glass articles, and approximately 75 unexpired patents covering annealing methods and lehrs and article handling apparatus. They are without knowledge or information sufficient to form a belief as to the truth of the other averments of this paragraph.

(The complaint does not contain any paragraphs numbered 220 to 224, inclusive.)

225. They deny all averments set forth in this paragraph and aver that no glass container machinery is or has been manufactured for Hartford and Owens; that Hartford and Owens have no joint or common interest in the manufacture of such machinery; and that they operate, and have at all times operated, wholly independent of each other in manufacturing, or causing the manufacture of, such machinery.

226. They admit that Corning is a large manufacturer and distributor of heat-resisting ware, but they are without knowledge or information sufficient to form a belief as to the truth of the other averments set forth in this paragraph.

227. They admit that in the year 1937 Owens manufactured substantially 38 per cent of all glass containers (including milk bottles and domestic fruit jars) manufactured in the United States. They do not have definite knowledge as to the respective quantities manufactured by the defendants Hazel-Atlas, Anchor Hocking, Thatcher, and Ball Brothers; but, upon information and belief, they [fol. 304] admit that the percentages stated in this paragraph with respect to the quantities manufactured by those defendants are substantially correct for the year 1937. They are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph except as hereinabove set forth.

228. They admit that in the year 1937 Owens manufactured substantially 35 per cent of all the milk bottles produced in the United States. They do not have defi-

nite knowledge as to the respective quantities of milk battles manufactured by the defendants Thatcher and Liberty Glass; but, upon information and belief, they admit that the percentages stated in this paragraph with respect to the quantities manufactured by those defendants are substantially correct for the year 1937. They are without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph, except as hereinabove set forth.

229. They admit that in 1937 Owens manufactured substantially 7.73 per cent of all fruit jars manufactured in the United States. They do not have definite knowledge as to the respective quantities of fruit jars manufactured by the defendants Ball Brothers and Hazel-Atlas; but, upon information and belief, they admit that the percentages stated in this paragraph with respect to the quantities manufactured by those defendants are substantially correct for the year 1937. They are without knowledge or information sufficient to form a belief as to the truth of the averments [fol. 305] contained in this paragraph, except as hereinabove set forth.

230. They deny that they, or any one of them, have established or maintained any conspiracy, monopoly, or combination in restraint of trade or have been guilty of any acts, alleged in the complaint or otherwise, having the effect or tending to produce the results, either in whole or in part, charged in this paragraph.

Wherefore, these answering defendants, individually and collectively, pray that the complaint be dismissed as to them without costs to these defendants.

Williams, Eversman & Morgan, Lloyd T. Williams, Henry A. Middleton, 1600 Ohio Bldg., Toledo, Ohio, Attorneys for the Within Named Defendants.

Dated at Toledo, Ohio, March 7, 1940.

[fol. 306] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF DEFENDANTS LYNCH CORPORATION, THOMAS CHANDLER WERBE, E. G. BRIDGES, A. G. DOLL, J. L. WATTS, UZ MCMURTRIE AND N. M. MCCULLOUGH—Filed March 7, 1940.

The defendants Lynch Corporation (hereinafter sometimes referred to as Lynch), Thomas Chandler Werbe, E. G. Bridges, A. G. Doll, J. L. Watts, Uz McMurtrie and N. M. McCullough, by their attorneys, for answer to the Complaint herein, each answering upon information and belief as to all other of said named defendants, jointly and severally admit, deny and aver as follows:

(1) Answering Paragraph One, the above named answering defendants admit that by said bill of complaint and these proceedings, plaintiff seeks to invoke the provisions of Section 4 of the Act of Congress of July 2, 1890, C. 647, 26 Stat. 209, as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", said act being commonly known as the "Sherman Antitrust Act", and Section 15 of the Act of Congress, October 15, 1914, C. 323, 39 Stat. 730, as amended, said act being commonly known as the "Clayton Act", against the defendants named in said bill of complaint to prevent acts alleged by plaintiff to be violation of Section 1 [fol. 307] and 2 of the Sherman Act and Section 3 of the Clayton Act, but these answering defendants deny that they, or any of them, have done, or threaten or intend to do, any act or thing in violation of the said acts and statutes, or any of them.

(2) Answering Paragraph Two, these answering defendants admit that certain of the defendants herein, not including defendant Lynch, are found within the Western Division of the Northern District of Ohio, and carry on business therein, and that interstate trade and commerce involved in the glass industry are carried on in part within such district and division, but the said answering defendants deny that they, or any of them, have done or threaten to do any unlawful act or violation, and deny each and every other averment in said paragraph.

(3) Answering Paragraphs 3, 4, 5, 6, 7, 8 and 9, they state they are without knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

(4) Answering Paragraph 10 they admit the allegations therein contained.

(5) Answering Paragraph 11 they state they are without knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

(6) Answering Paragraph 12 they admit that prior to 1938 Illinois Glass Company owned shares of stock in Lynch Corporation, which shares were thereafter distributed to certain individuals, including the defendants, William E. Levis, R. H. Levis, Harold Boeschenstein, Isaac J. Collins and J. Harrison McNash, who, these defendants [fol. 308] were informed and believe, were stockholders in Illinois Glass Company, but they deny that the Levis group, or any of the individuals in said group, has ever been or is now actively interested in the management of Lynch Corporation, or has ever been or is now directly or indirectly represented on the board of directors of defendant Lynch Corporation. These defendants state they are without knowledge or information sufficient to form a belief as to the truth of all other averments in said paragraph.

(7) Answering Paragraphs 13 and 14 they state they are without knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

(8) Answering Paragraph 15 they admit, on information and belief, the averments of said paragraph, except that they state they are without knowledge or information sufficient to form a belief as to whether said association includes among its members all but two of the glass container manufacturers in the United States.

(9) Answering Paragraph 16 they state they are without knowledge or information sufficient to form a belief as to the truth of the averments therein contained, except they admit, on information and belief, that defendants Charles R. Stevenson and Emory G. Ackerman have held administrative offices in defendant Glass Container Association

of America, Inc. and have performed the duties of such respective offices.

(10) Answering Paragraphs 17, 18, 19, 20, 21 and 22, they state they are without knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

[fol. 309] (11) Answering Paragraph 23, these answering defendants admit that the individual defendants named therein, have been for various times and are, officers and/or directors of defendant Lynch and that each of them has participated and participates in the direction and management of defendant Lynch, but only to the extent of performing various official acts within his authority as such officer and/or director, since he individually became an officer and/or director of said defendant Lynch; they admit that said individual defendants, or some of them, as officers and/or directors of defendant Lynch, and not otherwise, have approved, authorized, ordered and done some, but not all, of the acts admitted in this answer to have been performed by defendant Lynch; they deny that any of said acts were in violation of the Antitrust laws of the United States, or were in any manner or respect unlawful.

(12) Answering Paragraphs 24, 25 and 26, they state they are without knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

(13) Answering Paragraph 27, these defendants, upon information and belief, deny the averment therein, but aver, upon information and belief, that some, but not all, of the corporate defendants are engaged in trade and commerce between and among the several states of the United States.

(14) Answering Paragraph 28, these defendants admit that the glass machinery and glassware referred to in the Complaint is manufactured in various localities and that some of such glass machinery and glassware is shipped and distributed through the channels of interstate trade and commerce; and deny that all of such machinery and glassware is so shipped and distributed.

[fol. 310] (15) Answering Paragraph 29, these defendants, upon information and belief, deny the averments therein contained.

(16) Answering Paragraph 30, these defendants admit upon information and belief, that prior to 1905, glassware was made by hand in the United States, and that about that time, the glassware industry, so far as the manufacture of glass containers was concerned, was revolutionized by an automatic suction-fed machine developed by Michael F. Owens, who was associated with the predecessor of defendant Owens; they admit, upon information and belief, that Owens owned patents and inventions for the manufacture of glassware machinery known as the "suction method" and that it manufactured and leased such machinery to other manufacturers of glassware under license agreements; and state that they are without knowledge or information sufficient to form a belief as to the truth of the other averments contained in said paragraph.

(17) Answering Paragraph 31 and 32 they state they are without knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

(18) Answering Paragraph 33-a, these defendants admit, upon information and belief, that since 1916 one of the commercial methods for the manufacture of glass, is as is stated in said paragraph; they further state they are without knowledge or information sufficient to form a belief as to the truth of the other allegations in said paragraph.

Answering Paragraph 33-b, they admit that some glass-container-making machines are fed by the suction method and some by the "gob-feeding" method; they further aver [fol. 311] that some non-suction machines are fed by other than the "gob-feeding" method; they admit that the description contained therein in lines 15 to 20 of said Paragraph 33-b correctly describes one of the "gob-feeding" methods; they further state they are without knowledge or information sufficient to form a belief as to the truth of the remaining averments of said paragraph.

Answering Paragraph 33-c, and as supplemented by plaintiff's bill of particulars, they admit that in the suction process the molten glass is sucked directly into the molds and that in one of the gob-feeding processes the molds into which the molten glass is delivered are parts of a machine

known as a former or forming machine; they admit that until recently there were and aver that there now are several types of forming machines manufactured and sold by companies independent of one another and independent of, and having no connection with, defendant Hartford, or defendant Lynch; they deny each and all of the other averments contained in said Paragraph 33-c.

Answering Paragraph 33-d, they state they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein.

(19) Answering Paragraph 34, these answering defendants deny each and every averment therein contained in so far as it in any way relates to these defendants, or any of them; and they state they are without knowledge or information sufficient to form a belief as to the truth of any such averment in so far as it relates to other defendants independently of these defendants.

[fol. 312] (20) Answering Paragraph 35, they state they are without knowledge or information sufficient to form a belief as to the truth of the averments therein, but deny that they, or any of them, entered into the conspiracy therein charged, or had or have any part or connection therewith.

(21) Answering Paragraphs 36, 37 and 38, they deny each and every averment therein contained in so far as it in any way relates to or affects these defendants, or either of them, and they state they are without knowledge or information sufficient to form a belief as to the truth of the averments therein so far as they affect other defendants.

(22) Answering Paragraphs 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60 and 61, they state they are without knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

(23) Answering Paragraph 62, they state they are without knowledge or information sufficient to form a belief as to the truth of the averments therein contained, and they deny that they, or any of them, entered into or had any connection with or knowledge of the contract referred to therein as the "General License Agreement".

(24) Answering Paragraphs 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, and 74, they state they are without knowledge

or information sufficient to form a belief as to the truth of the averments therein contained.

(25) Answering Paragraph 75, they state they are without knowledge or information sufficient to form a belief as to the truth thereof, but state that in 1933 it was learned [fol. 313] that Hartford then owned patents or patent applications known as Sears & Lobb patents.

(26) Answering Paragraph 76, they state they are without knowledge or information sufficient to form a belief of the truth of the averments therein, but aver that in 1933 Lynch Corporation learned that Hartford Empire Company had acquired and held an option on said Headley and Thompson patent applications.

(27) Answering Paragraphs 77, 78, 79, 80, 81, 82, 83, 84 and 85, they state they are without knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

(28) Answering Paragraph 86, these defendants deny that in 1933, or at any other time, defendants Hartford and Owens, through defendant Lynch, purchased the patent rights of Ed Miller Machine and Mold Company. They aver, however, that in 1933 defendant Lynch Corporation purchased the business and most of the assets of said Ed Miller Machine and Mold Company, including certain patent rights relating to feeders and to feeder-fed forming machines but not to suction machines; that defendant Lynch thereafter did grant to defendant Hartford a license under the patent rights so acquired, but deny that they sold or granted defendant Owens any patents or patent rights acquired from said Ed Miller Machine and Mold Company.

(29) Answering Paragraphs 87, 88, 89, 90 and 91, they state they are without knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

(30) Answering Paragraphs 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109 and 110, they [fol. 314] state they are without knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

(31) Answering Paragraph 111, as supplemented by the voluntary bill of particulars, these answering defendants deny each and all of the averments therein contained.

(32) Answering Paragraph 112, these defendants admit that for ten years prior to 1927 Lynch Corporation had manufactured and marketed automatic forming machines for narrow-neck ware and that by 1927 a large percentage, perhaps 70% as averred, of the narrow-neck bottling-machine formers in use in the United States were Lynch machines; they state they are without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained therein.

(33) Answering Paragraph 113, these defendants deny the averments thereof as pleaded; they aver that from 1927 to 1933 defendant Lynch was engaged in an extended controversy in the United States Patent Office upon interferences between certain Headley and Thompson applications and other applications for patents owned or controlled by Lynch; and all relating to forming machinery; that such controversy was between Lynch and the then owners of said Headley and Thompson applications, to-wit: Whitall Tatum Company, and not with defendant Hartford; they admit that said controversy was conducted at great cost to defendant Lynch, perhaps $250,000.00 as alleged; they further admit that in June, 1933, the Board of Appeals of the United States Patent Office awarded priority to the said Headley and Thompson applications and they aver that thereafter, defendant Hartford purchased the said Headley and Thompson applications from Whitall Tatum Company; they state that as to other matters therein contained they are without knowledge or information sufficient to form a belief as to the [fol. 315] truth of the averments relating thereto.

(34) Answering Paragraph 114 and 115, they admit that on August 23, 1933, defendants Hartford and Lynch entered into a license agreement, but deny that the terms of said agreement are correctly or fully set forth in said Paragraphs 114 and 115, and they refer to said agreement, as modified, for a full and correct statement of its terms.

(35) Answering Paragraph 116, these answering defendants deny each and all of the averments therein, and

deny that there has ever been or is now any such understanding between Hartford Empire Company and Lynch Corporation, or any of these defendants.

(36) Answering Paragraph 117 these defendants aver that under the terms of the 1933 agreement between Hartford-Empire Company and Lynch Corporation, Lynch Corporation was granted a non-exclusive license to make and deliver narrow-neck forming machines, embodying Hartford licensed forming machine inventions, to any person or concern that had secured from Hartford a license under Hartford forming machine, inventions to use such forming machines, and further that by said agreement Hartford agreed to offer and upon the written acceptance of the licensee, to extend each of its feeder licensees, theretofore or thereafter made, to include, without additional production royalty, a non-transferable right to use with feeders if and when operated under such feeder licenses, forming machines acquired from Lynch or its predecessors and embodying licensed forming machine inventions. Upon information and belief they deny the other averments in said paragraph as pleaded.

[fol. 316] (37) Answering Paragraph 118 and 119, as supplemented by plaintiff's bill of particulars, they deny the averments therein contained.

(38) Answering Paragraph 120 they deny the averments therein contained. They aver the fact to be, however, that Lynch Corporation did, in 1933, purchase the business and certain of the assets of the Ed Miller Machine and Mold Company, including certain patent rights owned by it, but deny that such purchase was made with funds supplied by Hartford and Owens. Lynch did license Hartford under patents so acquired. They further aver that said Ed Miller Machine and Mold Company was not a competitor of Lynch Corporation; that it manufactured and sold forming machines for the production of wide-neck ware, operated on the press and blow principle, also presses for producing tumblers and pressed ware, whereas Lynch had made forming machines designed for the production of narrow-neck ware, operating on the blow and blow method; that Lynch Corporation, ever since said acquisition has continued to make and offer for sale the various models theretofore made by said Ed Miller Machine

and Mold Company and does now make and offer said various Miller models for sale without restrictions of any kind. They further deny that any patent rights acquired from Miller were transferred to defendant Owens, and further deny that they ever acquired any patent rights from O'Neill Suction Machine Company.

(39) Answering Paragraph 121 they deny the averments therein contained.

(40) Answering Paragraphs 122, 123, 124 and 125, they state they are without knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

[fol. 317] (41) Answering Paragraphs 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, and 142, they state they are without knowledge or information sufficient to form a belief as to the averments therein contained.

(42) Answering Paragraphs 143, 144, 145, 146, 147, 148, 149, 150, 152, 153, 154, 155, 156, 157, 158, 159, 160 and 161, they state they are without knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

(43) Answering Paragraph 162, they deny that Ball Brothers would have been compelled to use Hartford feeders with any forming machine purchased from Lynch Corporation and further aver that said Ball Brothers did in fact purchase a number of forming machines from Lynch Corporation.

As to other matters contained in said Paragraph, they state they are without knowledge and information sufficient to form a belief as to the truth thereof.

(44) Answering Paragraphs 163, 164, 165, 166, 167, 168 and 169, they state they are without knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

(45) Answering Paragraph 170, they state they are without knowledge or information sufficient to form a belief as to the truth of the averments therein, except that they admit, upon information and belief that Charles R. Stevenson and Emory G. Ackerman are and have been for

some time officers of said Glass Container Association of America, Inc.

(46) Answering paragraphs 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183 and 184, they state they [fol. 318] are without knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

(47) Answering Paragraph 185, they deny the averments therein contained.

(48) Answering Paragraphs 186 and 187, they state they are without knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

(49) Answering Paragraph 188, they deny each and every averment therein contained so far as they relate to or affect defendant Lynch Corporation, and state they are without knowledge or information sufficient to form a belief as to the truth of the averments therein contained so far as they relate to or affect other defendants.

(50) Answering Paragraphs 189, 190, 191, 192, 193 and 194, they state they are without knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

(51) Answering Paragraph 195 they admit that for several years Lynch Corporation has had substantial earnings and that the figures set forth in said paragraph are substantially correct.

(52) Answering Paragraphs 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218 and 219, they state they are without knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

(53) Answering Paragraph 225, they deny upon information and belief, the averments therein contained.

[fol. 319] (54) Answering Paragraphs 226, 227, 228 and 229, they state they are without knowledge or information sufficient to form a belief as to the truth of the averments therein contained.

(55) Answering Paragraph 230, they deny each and every allegation therein contained.

Wherefore, these answering defendants pray that as to them the Complaint be dismissed, with costs.

Doyle & Lewis, Pence, O'Neill & Diven, Attorneys for defendants Lynch Corporation, Thomas Chandler Werbe, E. G. Bridges, A. G. Doll, J. L. Watts, Uz McMurtrie and N. M. McCullough.

Of Counsel: Lehr Fess, Albert Diven, Anderson Bank Building, Anderson, Indiana.

[fol. 320] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF BALL BROTHERS CO., ET AL.—Filed March 7, 1940

Now comes Ball Brothers Company, Frank C. Ball, George A. Ball, E. Arthur Ball, W. H. Ball, Edmund F. Ball, A. M. Bracken and Fred J. Petty (hereinafter termed Answering Defendants), and at all times reserving to themselves all benefit and advantage of exception which can or may be had or taken to the errors, uncertainties or other imperfections in said complaint contained for answer thereunto say as follows:

As to Jurisdiction and Venue

1. As to paragraph 1 of the complaint, Answering Defendants admit that the complaint purports to be filed and the proceedings herein purport to be instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," and commonly known as the Sherman Anti-trust Act, and under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 730, as amended, said act being commonly [fol. 321] known as the Clayton Act, but deny that Answering Defendants, or any of them, have conspired or attempted to conspire, have created a monopoly or attempted to create a monopoly, have restrained trade or commerce or have attempted to restrain trade or commerce, or have in any way violated said Sherman Anti-Trust Act or said

Clayton Act or any similar laws of the United States of America.

2. As to paragraph 2 of the complaint, Answering Defendants admit that Ball Brothers Company (hereinafter termed "Ball Brothers") and some of the other corporate defendants named in the complaint, conduct business in and/or are found within the Western Division of the Northern District of Ohio; that interstate trade and commerce involved in the glass industry are carried on within said division and district; deny every other averment of paragraph 2 of the complaint insofar as they relate to, affect or in any way involve Answering Defendants or any of them; and are without knowledge or information sufficient to form a belief as to the truth of such other averments insofar as they relate to, affect or involve defendants other than Answering Defendants.

As to Description of Defendants

3. As to paragraphs 3 to 13, inclusive, of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments there set forth, except, on information and belief, admit that Hartford-Empire Company is a corporation existing under the laws of the State of Delaware with its principal office at Hartford, Connecticut, that Owens-Illinois Glass Company is a corporation organized and existing under the laws of the State of Ohio with its principal office at Toledo, Ohio, and that Lynch Corporation is a corporation organized and existing under the laws of [fol. 322] the State of Indiana with its principal place of business at Anderson, Indiana.

4. As to paragraph 14 of the complaint, Answering Defendants aver that the term "fruit jars" as used in the glass container trade, means wide-mouth, glass containers sold empty to the domestic or household trade for use by housewives in preserving foods and, with this understanding of the meaning of the term "fruit jars," admit all of the averments of paragraph 14 of the complaint.

5. As to paragraph 15 of the complaint, Answering De-Defendants admit, on information and belief, that defendant, Glass Container Association of America, Inc., is a corporation organized and existing under the laws of the

State of Delaware, and that Ball Brothers is now, and since 1928 has been a member thereof, but they are without knowledge or information sufficient to form a belief as to the truth of the other averments of said paragraph.

6. As to paragraph 16 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except they admit, on information and belief, that defendants, Charles R. Stevenson and Emory G. Ackerman have held and now hold administrative offices in the Glass Container Association of America, Inc.

7. As to paragraphs 17 to 25, inclusive, of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of any of the averments thereof.

8. As to paragraph 26 of the complaint, Answering Defendants admit that Frank Clayton Ball, George A. Ball, [fol. 323] E. Arthur Ball, W. H. Ball and Edmund F. Ball are officers and directors of Ball Brothers; that each has been an officer and/or a director since at least March 25, 1933; that A. M. Bracken and Fred J. Petty are now and have been directors of Ball Brothers since September 21, 1935; that said Fred J. Petty is now and has been Assistant Secretary of Ball Brothers since January 7, 1930; that A. M. Bracken is now and has been Assistant Treasurer of Ball Brothers since June 9, 1936; that all such officers and/or directors have participated in the direction and management of defendant, Ball Brothers; have approved, authorized, ordered and/or done some of the acts alleged in the complaint to have been performed by defendant, Ball Brothers; but Answering Defendants deny that the individual defendants here named or any of them have so approved, authorized, ordered or done any such acts except as an officer or director of defendant, Ball Brothers and further deny that any act or acts, so approved, authorized, ordered or done, violated the Sherman Anti-Trust Act, the Clayton Act or any similar laws of the United States of America.

9. As to paragraph 27 of the complaint, Answering Defendants admit that Ball Brothers is engaged in trade and commerce between and among the several states of the United States, deny, on information and belief, that de-

fendant Glass Container Association of America, Inc., is engaged in trade and commerce between and among the several states of the United States and aver, on information and belief, that the other corporate defendants, except Stevenson Corporation and Empire Machine Company, are engaged in trade and commerce between and among the several states of the United States and as to Stevenson Corporation and Empire Machine Company, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof.

[fol. 324] 10. As to paragraph 28 of the complaint, Answering Defendants admit that such of the various kinds of glassware, referred to in the complaint, as are manufactured by Ball Brothers are shipped and distributed throughout the channels of interstate trade and commerce and, on information and belief, admit that such of the various kinds of glassware referred to in the complaint as are manufactured by other corporate defendants are likewise distributed through the channels of interstate trade and commerce, but Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of other averments of paragraph 28 of the complaint.

As to Description of Early History of the Glassware Industry

11. As to paragraph 29 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof.

12. As to paragraph 30 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except they admit, on information and belief, that Michael F. Owens was associated with the predecessor of the defendant Owens-Illinois Glass Company in 1905; that on or about that time he made an invention relating to glass-making machinery (referred to in the complaint as an automatic suction machine); that during the period between 1905 and 1917 the defendant Owens-Illinois Glass Company, and/or its predecessor, was a manufacturer and distributor of glass containers in the United States, owned various patents and inventions relating to glassware-

manufacturing machinery, manufactured such machinery, [fol. 325] entered into agreements with some other manufacturers of glassware under which it licensed them under its patents to use its inventions in the manufacture of glassware and leased to them such glass-making machinery; and that royalties were paid to defendant Owens-Illinois Glass Company and/or its predecessor under, at least, some such agreements; and except Answering Defendants deny that prior to 1905 glassware was made principally by hand or by semi-automatic machinery in the United States and, by way of affirmative defense and in amplification of such denial, aver, on information and belief, that the use of molten-glass delivering machinery, glassware-making machinery and glassware-conveying machinery became more and more prevalent from about 1890; that during the period immediately preceding the year 1905 automatic machinery for manufacturing glassware, and particularly glass containers, was in general use; that glassware-making machines, embodying the inventions of said Michael F. Owens and to which reference has been made, differed from other commercial glassware-making machines then in use in that the molten glass, employed by Owens machines in the manufacture of glassware, was sucked from the furnace directly into molds, whereas in such other machines the molten glass used in the manufacture of glassware was run from the furnace in the form of a stream and dropped into the molds, and that both types of machine were covered by United States patents.

13. As to paragraph 31 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof.

14. As to paragraph 32 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except they admit, on information and belief, that Hart- [fol. 326] ford Fairmont was the predecessor of the defendant Hartford-Empire Company; that it developed a machine (termed an automatic gob-feeding machine in the complaint) for the feeding of molten or plastic glass in the form of gobs or charges from the glass melting furnace to the molds of forming machines; and that such gob-feeding machines were used in competition with then exist-

ing Owens' suction machines in the production of glass containers and blown ware.

15. As to paragraph 33 of the complaint and each of the sub-divisions (a, b, c and d) thereof, and the bills of particulars filed in connection therewith, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof which refer to litigation with respect to tank furnaces (sub-paragraph a) and which refer to a claim by Owens as to control of the *"suction process"* and a claim by Hartford as to control of the *"gob-feeding method"* (sub-paragraph b), but deny each and every other averment of paragraph 33 and of all of sub-paragraphs thereof and of all said bills of particulars insofar as they relate to, affect, or in any way involve Answering Defendants or any of them, and, on information and belief, deny the same insofar as they relate to, affect, or in any way involve the other defendants, and, by way of affirmative defense and in amplification of such denial, aver, on information and belief,

(a) that the commercial manufacturing of glassware (glass containers and blown ware) involves the use of a furnace or tank for the melting and refining of a glass batch, such as a mixture of soda ash, limestone and cullet (broken glass); that after such batch is melted and refined in the furnace or tank—by the application of a batch-melting heat thereto—it is withdrawn from the furnace while in a molten or plastic state and delivered to a glassware-making machine;

[fol. 327] (b) that from the standpoint of the procedure employed in withdrawing the molten or plastic glass from the furnace and delivering it to the glassware-making machine, such machines may be divided into two types, viz., one in which the molten or plastic glass is sucked directly from the furnace into a mold which constitutes a part of the glassware-making apparatus, and one in which the molten or plastic glass is first withdrawn from the furnace and then delivered to a mold constituting a part of the glassware-making apparatus; that the machine referred to in paragraph 30 of the complaint as a *"suction machine"* made by Michael F. Owens, exemplifies the first described type, whereas the machine referred to in paragraph 32 of the complaint as *"an automatic gob-feeding*

machine," is one such as is employed to first withdraw the molten or plastic from the furnace and then deliver it to a mold of a machine of the second described type, i. e., a machine usually termed a "*forming machine*"; that in a gob-feeding machine molten or plastic glass is fed through a submerged orifice by mechanisms which cause it to be extruded from the orifice in the form of separate, measured gobs or drops, which remain suspended from the mouth of the orifice until released by a severing mechanism, whereupon the drop or gob, so released, falls into the mold of a forming machine;

(c) that in the so-called suction machine, separate charges of molten or plastic glass are, as aforesaid, sucked from the furnace directly into molds which constitute a part of the machine, rotate about a central column of the machine and successively dip into the surface of the molten glass within the furnace in the operation of sucking the charges of glass therefrom; that as each such mold rises from the surface of the glass the string of molten or plastic glass, adhering to the charge within the mold and string-
[fol. 328] ing out between it and the surface of the glass within the furnace, is severed by a severing mechanism, such as knife, and the mold-confined charge is then and subsequently acted upon by appropriate mechanisms constituting a part of the suction machine, and is eventually delivered from the machine while hot, but in the form of a complete glass article;

(c_1) that in the operation of manufacturing glassware by means of a so-called forming machine, the gob or charge of glass delivered by the glass feeding machine, is received by a mold which forms a part of the forming machine and the mold-confined charge is then and subsequently acted upon by appropriate mechanisms constituting a part of the forming machine, and is eventually delivered from the machine while hot, but in the form of a complete glass article;

(d) that the hot articles so delivered are conveyed—usually by power actuated devices including motor driven conveyors—to a lehr or oven which usually includes a conveyor, in the form of an endless belt, on which the hot articles are placed for movement through the lehr or oven; and that procedure involving the use of the lehr is termed annealing, constitutes, in effect, a controlled cooling

of the hot articles, and is for the purpose of eliminating temperature and other detrimental strains from the glass of which the articles are formed.

16. As to paragraph 34 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants deny each and every averment thereof insofar as they relate to, affect, or in any way involve Answering Defendants, or any of them, but are without knowledge or information sufficient to form a belief as to the truth of such averments insofar as they relate to, affect, or involve other defendants, except Answering Defendants deny, on information and belief, that *"the defendants have violated, and are now violating, Sections 1 and 2 of the Sherman Act* [fol. 329] *and Section 3 of the Clayton Act by unlawfully conspiring, monopolizing, attempting to monopolize and by unlawfully contracting, combining and conspiring to restrain interstate and foreign trade and commerce"* • • • *"by acquiring and maintaining monopolies of patents covering the manufacture and licensing of glass making machinery."*

17. As to paragraph 35 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except they deny with respect to Answering Defendants and each of them and deny, on information and belief, with respect to defendants other than Answering Defendants, the averment that the defendants named in paragraphs 35 of the complaint and others *"entered into a conspiracy unlawfully to attempt to monopolize, unlawfully to monopolize and unlawfully to combine to restrain trade among and between the several states of the United States with respect to patents and inventions on automatic machinery for the production of glass containers and pressed and blown glassware."*

18. As to paragraphs 36, 37 and 38 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants deny each and every averment thereof insofar as they relate to, affect, or in any way involve Answering Defendants, or any of them, and, on information and belief, deny such averments insofar as they relate to, affect, or in any way involve the other defendants, except

with reference to the bill of particulars filed in connection with paragraph 36, it is admitted that defendant Ball Brothers entered into a written agreement with defendant Hartford-Empire Company on March 25, 1933, reference being made to such agreement for full particulars thereof.

[fol. 330] As to Allegations re Hartford-Corning Agreements of 1916 and 1922

19. As to paragraphs 39 to 52, inclusive, of the complaint and the bill of particulars filed in connection with paragraph 51 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of any of the averments thereof, except they admit, on information and belief and with reference to paragraph 45 of the complaint, that subsequent to 1916 the defendant Hartford-Empire Company (or its predecessor Hartford-Fairmont Company) issued licenses to a number of glass manufacturers for the production of different types of glassware.

As to Allegations re Hartford-Owens Relations

20. As to paragraph 53 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to any of the averments thereof, except they admit, on information and belief, that the license to the Greenfield Fruit Jar & Bottle Works, there referred to, was limited to the manufacture of fruit jars, as that term is defined in paragraph 4 hereof.

21. As to paragraphs 54 and 55 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof except, referring to paragraph 54 of the complaint, it is admitted that Ball Brothers acquired a so-called feeder license under patents owned or controlled by Hartford-Empire Company, and reference is made to the aforesaid agreement of March 25, 1933, between Ball Brothers and Hartford-Empire Company for full particulars as to such license.

[fol. 331] 22. As to paragraph 56 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except they admit, on information and belief, that

in 1919 the defendant Peiler, an employee of the Hartford-Fairmont Company and later of the defendant Hartford-Empire Company, filed several applications for patent relating to gob feeding procedures and/or gob feeding machines; that the Hartford-Fairmont Company or the defendant Hartford-Empire Company, acquired from the Howard Automatic Glass Company some patents relating to glass feeding procedures and/or glass feeding machines; and that in 1920 the Berney Bond Company was sued for alleged infringement of patents relating to gob-feeding machines; and that such suit was settled and that Berney Bond Company took a license under United States patents owned by defendant Hartford-Empire Company and relating to gob feeding.

23. As to paragraphs 57 and 58 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except that they admit, on information and belief, that defendant Owens-Illinois Glass Company sued J. T. A. Hamilton Company, then a Hartford licensee, charging infringement of patents to Lott and Brookfield.

24. As to paragraph 59 of the complaint, Answering Defendants deny each averment thereof, except they admit, on information and belief, that in 1920 Hartford-Fairmont Company (predecessor of defendant Hartford-Empire Company) sued the United States Glass Company; that the William J. Miller Glass Engineering Company intervened in such suit; that the suit was predicated on the charge that [fol. 332] gob-feeding machines employed by said United States Glass Company infringed Hitchcock reissue patent 13,929 (reissue of original patent 805,067 of Nov. 21, 1905) owned by the Hartford-Fairmont Company and relating to gob feeding; that the patent in suit expired in 1922 and the suit was lost by the Hartford-Fairmont Company (then Hartford-Empire Company) subsequent to that date (see *Hartfort-Fairmont Company v. United States Glass Company* (William J. Miller Glass Engineering Company intervener) 2 F. (2d) 109).

As to Allegations re Owens-Hartford 1924 Agreement

25. As to paragraphs 60 to 70, inclusive, of the complaint, Answering Defendants are without knowledge or informa-

tion sufficient to form a belief as to the truth of the averments thereof, except that they admit for themselves, the lack of knowledge averred in paragraph 65 of the complaint and that information as to the Owens-Hartford 1924 agreement became public as averred.

As to Allegations re Patent Litigation and Acquisitions Resulting in Elimination of Competition—1924 to 1932

26. As to paragraph 71 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except that they deny any conspiracy in restraint of interstate trade and commerce in which they, or any of them, have been or are now involved.

27. As to paragraph 72 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants are without knowledge or information [fol. 333] sufficient to form a belief as to the truth of the averments thereof, except they admit, on information and belief, that in 1924 persons and companies, independent of Hartford and Owens, were engaged in the business of manufacturing and distributing glass-making machinery and in the business of manufacturing glass containers; and that such glass container manufacturers employed glass-making machinery which was neither obtained from nor developed by either of the defendants Hartford-Empire Company or Owens-Illinois Glass Company.

28. As to paragraph 73 of the complaint, Answering Defendants deny each and every averment thereof, except they admit, on information and belief, that the defendant Hartford-Empire Company failed to take an appeal from the decision in the suit brought against the United States Glass Company (2 F. (2) 10), referred to in paragraph 59 of the complaint and paragraph 24 hereof, and aver, on information and belief and in amplification of such denial, that if such failure constituted an abandonment of rights, it only abandoned such as were enforceable in such suit.

29. As to paragraph 74 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except they admit, on information and belief, that the suit against the J. T. and A. Hamilton Company, referred to

in paragraph 58 of the complaint and paragraph 23 hereof, was settled by a consent decree in which the J. T. and A. Hamilton Company admitted the validity of the Lott patents there in suit.

30. As to paragraphs 76 and 76 of the complaint, Answering Defendants are without knowledge or infor- [fol. 334] mation sufficient to form a belief as to the truth of the averments thereof.

31. As to paragraph 77 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except they admit, on information and belief, that the defendant Owens-Illinois Glass Company sued the Miller Glass Engineering Company, charging infringement by that company of the Lott patents, and that the Miller Glass Engineering Company sold its patents to the defendant Hartford-Empire Company and aver, on information and belief, that the suit, here mentioned, was never brought to trial.

32. As to paragraph 78 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except they admit, on information and belief, that the defendant Hartford-Empire Company in 1926 sued the Lamb Glass Company—a user of Miller Glass feeding machines—claiming that such machines infringed patents owned by it; that such suit was partially successful (58 F. (2d) 701, 6th C. C. A.); that the Lamb Glass Company took a license under patents owned and/or controlled by the Hartford-Empire Company; and that infringement suits were also instituted against the Jeannette Glass Company and the F. E. Reed Glass Company and that such suits are now pending.

33. As to paragraph 79 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except that they admit, on information and belief, that the defendant, Owens-Illinois Glass Company filed two suits, one against the Federal Glass Company and the [fol. 335] other against Tucker, Reeves and Beatty, and charged infringement of the Lott patents in both such suits; that both such suits were dismissed by the plaintiff therein

(Owens-Illinois Glass Company), and that the defendant Hartford-Empire Company acquired at least some of the so-called Tucker, Reeves and Beatty patents.

34. As to paragraph 80 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof.

35. As to paragraph 81 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except they admit, on information and belief, that the defendant Hartford-Empire Company sued Nivison-Weiskopf Company charging that glass feeders employed by Nivison-Weiskopf Company infringed, among other patents, "phase change" patent No. 1,573,742, and that there was an appeal from the decree of the District Court in that suit (58 F. (2d) 701, C. C. A. 6th).

36. As to paragraph 82 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except they admit, on information and belief, that the application for the so-called "stuffing patent"—Peiler patent 1,655,391 of January 3, 1928—was pending before the United States Patent Office in 1925, was assigned to defendant Hartford-Empire Company, issued to that company in 1928, formed the basis of a suit brought by that company against defendant Hazel-Atlas Glass Company (39 F. (2d) 111), and that the opinion of the United States [fol. 336] Circuit Court of Appeals for the Third Circuit filed in that case on May 5, 1932 (59 F. (2d) 399) refers to and quotes from an article published in the July 17, 1926 issue of the National Glass Budget as that of William P. Clark, President of the American Flint Glass Workers' Union.

37. As to paragraph 83 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except they admit, on information and belief, that in 1926 Hartford-Empire Company filed a suit against the Obear-Nester Glass Company predicated on the charge that a certain type of glass feeder machine used by that company constitutes an infringement of certain patents owned

by Hartford-Empire Company, and that such suit was terminated favorably to the Hartford-Empire Company by a decision of the United States Circuit Court of Appeals for the 8th Circuit which was announced February 24, 1930 (39 F. (2nd) 769); that Hartford-Empire Company then filed a second suit against the Obear-Nester Glass Company, charging that a different type of glass feeder machine employed by the Obear-Nester Glass Company infringed other patents owned by Hartford-Empire Company (51 F. (2d) 85), and that such second suit was terminated favorably to the Obear-Nester Glass Company on June 1, 1934 (71 F. (2d) 539); and that later a third suit was filed by Hartford-Empire Company against Obear-Nester Glass Company charging that glass feeder machines then employed by that company constitute an infringement of United States patents owned by Hartford-Empire Company, other than those which formed the basis for the second suit, and reference is made to the pleadings and other records in each such suit for a full and accurate statement of the proceedings therein.

[fol. 337] 38. As to paragraph 84 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except they admit, on information and belief, that suit was filed by Hartford-Empire Company against Kearns-Gorsuch Bottle Company on the charge that a feeder machine employed by that company constitutes an infringement of certain patents owned by Hartford-Empire Company, and that such suit was terminated favorably to Hartford-Empire Company by a decision of the United States Circuit Court of Appeals for the Sixth Circuit announced May 12, 1932 (58 F. (2d) 701), and reference is made to the pleadings and other records in such suit for an accurate statement of the proceedings therein.

39. As to paragraphs 85 to 89, inclusive, of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except with reference to paragraph 88 of the complaint, they admit, on information and belief, that suit was brought by defendant Hartford-Empire Company against Swindell Brothers, Inc., and was predicated on the charge that glass annealing lehrs furnished by the Amsler-Morton Company and used by Swindell Brothers,

Inc., constitute an infringement of certain United States patents owned by defendant Hartford-Empire Company (18 F. Supp. 191; 96 F. (2d) 227; 99 F. (2d) 61), and reference is made to the pleadings and other records in such suit for an accurate statement of the proceedings therein.

40. As to paragraphs 90 and 91 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except with reference to paragraph 90 it is ad-
[fol. 338] mitted, on information and belief, that defendant Hartford-Empire Company did bring suit against Tygart Valley Glass Company, Shawkee Manufacturing Company, Glenshaw Glass Company and McKee Glass Company; and that suits brought by defendant Hartford-Empire Company against Obear-Nester Glass Company and the F. E. Reed Glass Company are now pending.

As to Allegations re February 4, 1931, Amendment to 1924 Agreement Between Hartford and Owens

41. As to paragraphs 92 and 93 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof.

As to Allegations re Hartford, Owens and Hazel-Atlas Agreements, July 1, 1932

42. As to paragraphs 94 to 110, inclusive, of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except with reference to paragraph 96 of the complaint, they admit, on information and belief, that suit was filed by Hartford-Empire Company against Hazel-Atlas Glass Company in 1928 (39 F. (2d) 111; 59 F. (2d) 39), and that the United States Circuit Court of Appeals for the Third Circuit held that feeder machines used by Hazel-Atlas Glass Company infringed United States patent 1,655,391 owned by Hartford-Empire Company and except that Answering Defendants admit, but for themselves only, the lack of knowledge averred in paragraph 106 of the complaint and that information as to the Owens, Hartford, Hazel-Atlas agreements became public as there averred.

[fol. 339] As to Allegations re Hartford-Lynch Agreement, 1933

43. As to paragraphs 111 to 120, inclusive, of the complaint and the bills of particulars filed in connection with paragraphs 111 and 119 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof.

44. As to paragraph 121 of the complaint, Answering Defendants deny each and every averment thereof.

As to Allegations re Elimination of Competition in Lehrs

45. As to paragraphs 122 to 124, inclusive, and the bills of particulars filed in connection with paragraph 122 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except as noted in paragraph 39 hereof they admit, on information and belief, that the defendant Hartford-Empire Company brought suit against Swindell Brothers, Inc., charging that Amsler-Morton lehrs used by Swindell Brothers, Inc., infringe certain United States patents owned by defendant Hartford-Empire Company (18 F. Supp. 191); that the United States Circuit Court of Appeals for the Fourth Circuit, reversing the decision of the District Court, held that the Amsler-Morton lehrs involved by the suit infringed such Hartford-Empire patents; and that the Supreme Court denied a petition for a writ certiorari in connection with that litigation.

46. As to paragraph 125 of the complaint, Answering Defendants deny the averments thereof.

[fol. 340] As to Allegations re 1925 Hartford-Owens Agreements

47. As to paragraphs 126 and 127 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof.

As to Allegations re Hartford-Owens-Thatcher-Liberty Agreements Regarding Milk Bottles

48. As to paragraphs 128 to 142, inclusive, and the bills of particulars filed in connection therewith, Answer-

ing Defendants are without knowledge or information sufficient to form a belief as to the truth thereof.

As to Allegations re Hartford, Owens, Hazel-Atlas, Ball Brothers Agreements

49. As to paragraph 143 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants deny each and every averment thereof, except it is admitted that the defendant Ball Brothers entered into the agreement of March 25, 1933, referred to in paragraph 18 hereof, reference being made to such agreement for full particulars thereof.

50. As to paragraph 144 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants admit the averments thereof, except they deny that the agreement dated November 2, 1924, is still in force and effect; deny that Ball Brothers ever had an exclusive license under the agreement of November 2, 1924, except in connection with fruit jars, as that term is defined in paragraph 4 hereof, and deny that Ball Brothers now has an exclusive license to use any Owens suction machine in the manufacture of domestic fruit jars or any other glass articles or that it has had such a license since June [fol. 341] 6, 1933; and by way of affirmative defense and in amplification of such denial, aver that the agreement referred to as dated November 2, 1924, terminated on June 6, 1933; that under the terms thereof (Section XIV), all Owens suction machines licensed to Ball Brothers thereunder became the property of Ball Brothers at the expiration of such agreement; that Ball Brothers now owns, has continued to use and is now using such machines in the manufacture of glass containers—including fruit jars as defined in paragraph 4 hereof—and that Ball Brothers has made no royalty or other similar payment to Owens-Illinois Glass Company or to any other company or individual because of its use of such machines subsequent to the termination of said agreement on June 6, 1933.

51. As to paragraph 145 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants deny each and every averment thereof, and by way of affirmative defense and in amplification of such denial, aver that on or about November 1, 1925, defendant Ball

Brothers acquired the glass manufacturing business of Schram Manufacturing Company for approximately $5,231,700.00 and on or about January 9, 1929, acquired the glass manufacturing business of the Pine Glass Company for approximately $872,400.00; that the acquisition of each such business included also the good will associated therewith and all the physical assets owned and employed by the company involved in the manufacture, sale and distribution of glassware, to wit, physical assets such as real estate, buildings, glass-making machinery, other machinery, equipment and inventory of materials and manufactured products then on hand; that in connection with said Schram Manufacturing Company, such acquisition also included several United States patents, relating to apparatus for and/or methods of procedure employed in the manufacture [fol. 342] of glassware, and certain trademarks employed by the Schram Manufacturing Company in connection with the sale and distribution of glassware; and that in connection with said Pine Glass Company, such acquisition also included a United States patent relating to a particular form of lehr loading device.

52. As to paragraph 146 of the complaint, and the bills of particulars filed in connection therewith, Answering Defendants deny each and every averment thereof, except they admit that defendant Ball Brothers attempted to and did operate independently of defendant Hartford-Empire Company prior to March 25, 1933; that, at no time prior to that date did Ball Brothers have a license from Hartford-Empire Company to use machinery purporting to be covered by, or operating in accordance with procedure purporting to be covered by patents owned by that company; that between 1912 and March 25, 1933, Ball Brothers developed automatic machinery, and obtained patents or patent rights covering other automatic machinery and Answering Defendants aver, by way of affirmative defense and in amplification of such denial, that the automatic machinery developed by Ball Brothers was not specifically for the manufacture of fruit jars, as that term is defined in paragraph 4 hereof, but was for the manufacture of glassware generally, such as fruit jars, other wide-mouth containers and narrow-mouth containers, and that the "patents or patent rights" acquired by it, covered machinery for the manufacture of glassware generally, such as wide-mouth

and narrow-mouth glassware for various uses; that during the period from 1912 to March 25, 1933, Ball Brothers attempted to avoid the monopolies defined by all adversely owned or controlled United States patents, including patents owned or controlled by defendant Hartford-Empire Company, but that toward the end of such period but prior to March 25, 1933, the decisions of several United [fol. 343] States Circuit Courts of Appeals indicated that it was infringing or, at least, raised a question as to whether or not it was infringing certain United States patents owned and/or controlled by defendant Hartford-Empire Company.

53. As to paragraph 147 of the complaint, and the bills of particulars filed in connection therewith, Answering Defendants deny each and every averment thereof, and aver by way of affirmative defense and in amplification of such denial, that prior to March 25, 1933, defendant Hartford-Empire Company was urging defendant Ball Brothers to take a license under United States patents owned or controlled by it and relating to machinery for, and/or methods of feeding molten or plastic glass in the operation of manufacturing glassware and at least some of which had been sustained as valid by United States Courts; that during negotiations leading up to the aforesaid agreement of March 25, 1933, between defendant Hartford-Empire Company and defendant Ball Brothers and for the purpose of obtaining the best terms possible for Ball Brothers, representatives of that company were strongly urging and asserting the desire for a license under such patents which would be exclusive as to the manufacture of fruit jars, as defined in paragraph 4 hereof, and were intending to imply that Ball Brothers would not be interested in any other type of license.

54. As to paragraph 148 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants deny the averments thereof, except they are without knowledge or information sufficient to form a belief as to the truth of the averment that prior to March 25, 1933 *"Knox Glass Bottle Company and Brockway Glass Company were also manufacturing fruit jars on machinery not licensed from Hartford"*, and except they admit that prior to March 25, 1933 Owens-Illinois Glass Company, Hazel-[fol. 344] Atlas Glass Company and General Glass Com-

pany were licensed under patents owned by defendant Hartford-Empire Company, admit that Owens-Illinois Glass Company and Hazel-Atlas Glass Company were then and now are principal competitors of Ball Brothers in the manufacture of fruit jars as well as other glass containers, and by way of affirmative defense and in amplification of such denial aver, on information and belief that prior to March 25, 1933, Owens-Illinois Glass Company, Hazel-Atlas Glass Company, General Glass Company, Salem Glass Works and Gayner Glass Works, were each licensed by defendant, Hartford-Empire Company to use machinery and methods of procedure, purporting to be covered by United States patents owned or controlled by said Hartford-Empire Company in the manufacture of fruit jars, as that term is defined in paragraph 4 hereof; that the license of said Salem Glass Works was limited to the then *less popular "Eureka" jar* and that the license of the Gayner Glass Works was limited to the production of 120,000 gross of fruit jars, as that term is defined in paragraph 4 hereof, and was further limited as hereinafter noted in paragraph 64 hereof.

55. As to paragraph 149 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants deny each and every averment thereof and by way of affirmative defense and in amplification of such denial, aver, on information and belief, that prior to March 25, 1933, the defendant Hartford-Empire Company did, from time to time, refuse to grant to some glass manufacturers the license or right under its United States patents to manufacture fruit jars, as that term is defined in paragraph 4 hereof, but that these refusals did not extend to all manufacturers of glassware; that during the early portion of the period (from about November, 1924 to March 25, 1933) the defendant Ball Brothers was not interested in acquir- [fol. 345] ing any license under any patent owned or controlled by the defendant Hartford-Empire Company but that later its interest in a license was occasioned by the holdings of various United States Circuit Courts of Appeals as to the scope and validity of certain of the patents owned by the Hartford-Empire Company, and that then it was interested in acquiring a license under such patents and of such form as would exclude other manufacturers of glassware from employing apparatus and/or methods of procedure, purporting to be covered by such patents,

in the manufacture of fruit jars, as that term is defined in paragraph 4 hereof.

56. As to paragraph 150 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments there set forth, and by way of affirmative defense aver, on information and belief, that in August of 1932 the Knox Glass Bottle Company and its affiliated companies obtained a license under certain United States potent sowned and/or controlled by the defendant Hartford-Empire Company; that such license was restricted as to the ware to be made thereunder, and did not give the Knox Glass Bottle Company or any of its affiliated companies the right to employ apparatus or methods of procedure, purporting to be covered by such patents, in the manufacture of fruit jars, as that term is defined in paragraph 4 hereof.

57. As to paragraph 151 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants deny each and every averment thereof, except they admit that defendant Ball Brothers entered into a written agreement dated March 23, 1933, with the Knox [fol. 346] Glass Bottle Company and four of its affiliated companies and R. R. Underwood, to which reference is made for full particulars thereof, and that by reason of such agreement paid the Knox group approximately $112,000.00 and admit, on information and belief, that the defendant Hartford-Empire Company cancelled $44,000.00 of the $100,000.00 of notes of the Knox group which Hartford had received in August of 1932 in payment of royalties claimed to be due at the time the Knox group took a license under patents owned by the defendant Hartford-Empire Company, and they specifically deny that entering into the aforesaid agreement, dated March 23, 1933, or that any act or conduct of Answring Defendants, or any of them, was for the purpose of, resulted in, or contributed to any unlawful conspiracy, monopoly or combination in restraint of trade.

58. As to paragraph 152 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, and by way of affirmative defense aver, on information and belief, that in January of 1933 Brockway Glass Company

obtained a license under certain United States patents owned or controlled by the defendant Hartford-Empire Company; that such license was restricted as to ware to be made thereunder and did not give said Brockaway Glass Company the right to use apparatus or methods of procedure, purporting to be covered by such patents, in the manufacture of fruit jars, as that term is defined in paragraph 4 hereof.

59. As to paragraph 153 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants deny each and every averment thereof and by way of affirmative defense and in amplification of such denial, aver that defendant Ball Brothers entered into a [fol. 347] written agreement with Brockway Glass Company on or about April 27, 1933, under the terms of which said Brockway Glass Company sold to Ball Brothers its business of manufacturing and distributing fruit jars, as that term is defined in paragraph 4 hereof, the good will connected with such business, a trademark, employed in connection with such business, two United States patents —one relating to jars and the other relating to conveying mechanisms—together with molds then on hand and used by it in the manufacture of such fruit jars and its inventory of such fruit jars and fruit jar fittings; that, in connection with such sale, Brockway agreed to discontinue the manufacture of such fruit jars in continental United States (except Alaska and New Mexico) for a period of fifteen years, and Ball Brothers paid to Brockway Glass Company, approximately $148,000.00; and Answering Defendants specifically deny that the purchase of such business or entering into such agreement with Brockway Glass Company or any act or conduct of Answering Defendants, or any of them, in connection therewith, was for the purpose of, resulted in, or contributed to any unlawful conspiracy, monopoly or combination in restraint of trade.

60. As to paragraph 154 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except they admit that under date of March 25, 1933, Hartford-Empire Company entered into the aforementioned agreement with Ball Brothers under which Ball Brothers acquired a license or right to employ, in the manfacture

of glassware, apparatus and methods of procedure purporting to be covered by patents of the United States owned and/or controlled by Hartford-Empire Company and under which agreement it paid Hartford-Empire Company $400,000.00 and agreed to said royalties based on [fol. 348] the use of all Brothers feeders which Hartford-Empire Company claimed infringed such patents, and, on information and belief, admit that prior to March 25, 1933 the General Glass Company had a license under United States patents owned and/or controlled by said Hartford-Empire Company, under which General Glass Company was permitted to use apparatus and methods of procedure purporting to be covered by such patents in the manufacture of fruit jars, as that term is employed in paragraph 4 hereof, and that such license was re-acquired by the defendant Hartford-Empire Company, but aver, on information and belief, that said General Glass Company never manufactured fruit jars, as that term is defined in paragraph 4 hereof.

61. As to paragraph 155 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants deny each and every averments thereof, except they admit that under the agreement of March 25, 1933, Ball Brothers agreed not to sell any of its feeder machines without first offering to sell the same to the defendant Hartford-Empire Company and by way of affirmative defense and in amplification of such denial, aver that under the agreement of March 25, 1933, Hartford-Empire Company agreed not to grant any other licenses, under United States patents owned or controlled by it, for the manufacture, within the United States, of fruit jars, as defined in paragraph 4 hereof, so long as Ball Brothers pays the minimum royalty payments provided for in said agreement, and Ball Brothers agreed not to sell any inventions relating to glass feeding machines and/or glass feeding methods without first offering to sell the same to Hartford-Empire Company on the same terms upon which it is willing to sell the same to others, all as is more fully and more specifically set forth by the aforementioned agreement of March 25, 1933.

[fol. 349] 62. As to paragraph 156 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants deny each and every movement thereof, but, by way of affirmative defense and in amplification

of such denial, aver that prior to entering into the agreement with the defendant Hartford-Empire Company dated March 25, 1933 and during the negotiations consummated by that agreement, representatives of Ball Brothers expressed the desire to limit the defendants Hazel-Atlas Glass Company and Owens-Illinois Glass Company in the use of apparatus and methods of procedure, purporting to be covered by United States patents owned or controlled by defendant Hartford-Empire Company, in the manufacture of fruit jars as that term is defined in paragraph 4 hereof, and to the extent that the normal yearly manufacture of such fruit jars by Hazel-Atlas Glass Company would belimited to 300,000 gross and the normal yearly manufacture of such fruit jars by defendant Owens-Illinois Glass Company would be limited to 100,000 gross, except when the demand for such fruit jars was unusually large, in which event, both companies were to disregard such limitations, but these Answering Defendants deny that any such agreement was entered into, consummated or has ever existed.

63. As to paragraph 157 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants deny each and every averment thereof, except insofar as the same are limited to the manufacture of fruit jars, as that term is defined in paragraph 4 hereof, and aver, on information and belief and in amplification of such denial, that since March 25, 1933 the defendant Hazel-Atlas Glass Company has not produced in any year more than 300,000 gross of fruit jars, as that term is defined in paragraph 4 hereof, that since March 25, 1933 defendant Owens-Illinois Glass Company has not produced in any year more than 100,000 gross of such fruit jars; and that since March [fol. 350] 25, 1933 the Knox group and the Brockway Glass Company have not produced any such fruit jars.

64. As to paragraph 158 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants deny the averments thereof relating to Gayner Glass Works; are without knowledge or information sufficient to form a belief as to the truth of the averment that Ball Brothers, Hazel-Atlas Company and Owens-Illinois Glass Company are the only Hartford licensees in the *general fruit jar field* and by way of affirmative defense and in amplification of said denial, aver, on information and

belief, that on March 25, 1933 Gayner Glass Works had a license under United State patents owned or controlled by defendant Hartford-Empire Company, to manufacture 120,000 gross of fruit jars, as that term is defined in paragraph 4 hereof, except that such fruit jars were not to exceed one-half gallon in capacity and such license was to expire on July 1, 1934.

65. As to paragraph 159 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants deny the averments thereof, and by way of affirmative defense and in amplification of such denial, aver that prior to 1936 Ball Brothers asked Hartford to stop Three Rivers Glass Company, a Hartford licensee, from manufacturing fruit jars, as that term is defined in paragraph 4 hereof, claiming such manufacture to be a violation of a covenant in the aforesaid agreement of March 25, 1933 between Ball Brothers and Hartford-Empire Company; that in 1936 defendant George A. Ball bid in and acquired the plant and all the property of Three Rivers Glass Company at a sale by a trustee in bankruptcy; that subsequent thereto such plant and property was transferred to a subsidiary of defendant Ball Brothers, was conditioned [fol. 351] for operation and was operated in the manufacture of glass containers until about December 4, 1937, at which time it was closed down for the purpose of repairing or reconditioning the glass melting tank or furnace constituting a part thereof; and that such furnace has been reconditioned and is now in operating condition, although it has not been operated since the completion of such reconditioning operations; and Answering Defendants further aver, but on information and belief, that Hartford-Empire Company did notify Three Rivers Glass Company a number of times to refrain from the use of licensed apparatus in the manufacture of fruit jars, as that term is defined in paragraph 4 hereof.

66. As to paragraph 160 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants deny each and every averment thereof, except they admit that defendant Ball Brothers has importuned defendant Hartford-Empire Company to prevent the unlicensed use of gob-feeder apparatus and gob-feeding procedures purporting to be covered by patents owned or controlled by Hartford-Empire Company, where the same are

used in connection with the manufacture of fruit jars, as that term is defined in paragraph 4 hereof.

67. As to paragraph 161 of the complaint and the bills of particular- filed in connection therewith, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except they admit that defendant Ball Brothers urged Hartford-Empire Company to obtain an early trial of the suit against the F. E. Reed Glass Company and offered the use of its (Ball Brothers) patents in the litigation in the event that it could be shown that the feeder machinery used by F. E. Reed Glass Company in any way infringed such [fol. 352] patents, and except they deny that the offer as to the use of Ball Brothers' patents, was made in an effort to eliminate the fruit jar business of F. E. Reed Glass Company and by way of affirmative defense and in amplification of such denial, aver that the offer was made in an effort to stop the free and unlicensed use of patented feeder machinery by the F. E. Reed Glass Company in the manufacture of fruit jars, as defined in paragraph 4 hereof, and particularly the free and unlicensed use of gob feeding machinery and gob feeding procedures substantially the same as those employed by Ball Brothers under its license of March 25, 1933 and for which it had paid and was then paying substantial amounts of money for the use thereof.

68. As to paragraph 162 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants deny each and every averment thereof and by way of affirmative defense and in amplification of such denial, aver that defendant Ball Brothers has used a feeder produced by Hartford-Empire Company and known as a Hartford single feeder; that the operation of such feeder was unsatisfactory under the particular conditions involved by such use; that Ball Brothers has in the past refused to purchase forming machines from defendant Lynch, but that such refusal was based on the fact that the defendant Lynch was placing or attempting to place limitations as to conditions of use on such machines, whereas Ball Brothers desired to be free to use such machines with any type of feeder machine and without paying royalties for their use; and that since about 1936 defendant Ball Brothers has purchased twelve such forming machines from the defendant Lynch and is now using them.

69. As to paragraphs 163 and 164 of the complaint and the bills of particulars filed in connection therewith, An- [fol. 353] swering Defendants deny each and every averment thereof and further deny that Answering Defendants, or any of them, joined, became involved in, or are now in any way involved in any unlawful conspiracies, monopolies or restraints of trade, or that any act or conduct of any such defendant has contributed to or is now contributing to, has aided or abetted, or is now aiding or abetting any such conspiracy, monopoly or restraint of trade.

As to Allegations re Hartford, Owens and Anchor-Hocking Relations

70. As to paragraphs 165 to 169, inclusive, of the complaint and the bills of particulars filed in connection therewith, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of any of the averments there set forth.

As to Allegations re The Glass Container Association; Production Quotas and Maintenance of Prices

71. As to paragraph 170 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments there set forth, except they admit that the defendant Glass Container Association of America, Inc., was organized in 1919 as a trade association for the glass container industry and for the purpose of compiling technical information, publicizing the industry and aiding in the improvement and quality of glass, and by way of affirmative defense they aver, on information and belief, that other functions of said Glass Container Association of America, Inc. included promoting the manufacture, sale and use of glass containers and allied articles and encouraging uniformity of legislation and governmental regulation affecting the glass [fol. 354] industry; that during all or a part of the period from 1920 to 1928 one I. J. Jennings was employed by the association, that since early in 1928 defendant Charles R. Stevenson has acted as business manager of the Association, and since the latter part of 1929 defendant Emory G. Ackerman has acted as assistant business manager of

the Association and that both Charles R. Stevenson and Emory G. Ackerman have performed the usual duties pertaining to their positions.

72. As to paragraph 171 of the complaint, Answering Defendants admit that the defendants there named have been for some time and are now members of the Association and are actively interested in the work of the Association, but Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the other averments of paragraph 171.

73. As to paragraph 172 of the complaint, Answering Defendants deny each and every averment thereof, except it is admitted on information and belief, that prior to 1928 the defendant Glass Container Association's activities included the collection and dissemination of statistical data and the issuance of advertising matter regarding the use of glass.

74. As to paragraph 173 of the complaint, Answering Defendants deny each and every averment thereof insofar as they relate to, affect or in any way involve Answering Defendants, or any of them, and, on information and belief, deny each and every such averment with respect to all of the other defendants named in paragraph 173.

75. As to paragraph 174 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments there set forth, except they aver, on information and belief, that defendant Hartford-Empire Company is a member of the [fol. 355] defendant Glass Container Association of America, Inc.

76. As to paragraph 175 of the complaint, Answering Defendants deny each and every averment thereof, insofar as they relate to, affect or in any way involve Answering Defendants or any of them and, on information and belief, deny all such averments insofar as they relate to, affect or in any way involve the other defendants or any of them.

77. As to paragraph 176 of the complaint and the bill of particulars filed in connection therewith, Answering Defendants deny each and every averment thereof, insofar as those averments relate to, affect or involve any acts or

activity in those portions of the glass container industry in which the defendant Ball Brothers is actively engaged or directly concerned and insofar as they relate to, affect or involve Answering Defendants or any of them, and on information and belief, deny each and every such averment insofar as they involve, relate to or affect all other portions of the glass container industry and all other defendants.

78. As to paragraph 177 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of any of the averments there set forth.

79. As to paragraph 178 of the complaint and the bill of particulars filed in connection therewith, Answering Defendants deny each and every averment thereof.

80. As to paragraph 179 of the complaint and the bill of particulars filed in connection therewith, Answering Defendants deny that prices are artificially high and/or non-competitive in those portions of the glass container industry in which the defendant Ball Brothers is actively engaged or directly concerned, but are without knowledge [fol. 356] or information sufficient to form a belief as to the truth of such averments insofar as they refer to prices or other conditions in other portions of the glass container industry, and deny all the averments of paragraph 179 insofar as they directly or indirectly relate to, affect or involve Answering Defendants, or any of them.

81. As to paragraph 180 of the complaint, Answering Defendants deny each and every averment thereof, except that they are without knowledge or information sufficient to form a belief as to the truth of the averment that the defendant Corning is the recognized price leader in the industry for heat resisting glassware, and the averment that the defendant Thatcher is the recognized price leader in the industry for milk bottles and, by way of affirmative defense and in amplification of such denial, aver that the prices in those portions of the glass container industry in which the defendant Ball Brothers is actively engaged or directly concerned, are not high prices nor prices which have been agreed upon or established or adhered to or

maintained or enforced by any concerted action; that the defendant Owens-Illinois Glass Company from time to time publishes its list prices in connection with certain lines of narrow-mouth glassware, including proprietary and prescription ware and beverage bottles, but that insofar as defendant Ball Brothers is concerned with or engaged in the sale of the lines of glassware covered by such published prices, it considers the same as fair prices, but it has never been and is not now under any obligation to maintain or adhere to such prices or any of them, it has never had and does not now have any agreement or understanding which in any way involves such prices or any of them or which in any way limits its business policy in connection with the sale of its products or in connection with the prices charged therefor; that the defendant Hazel-[fol. 357] Atlas Glass Company has from time to time published its list prices in connection with wide-mouth glassware (principally packers' glassware); that insofar as Ball Brothers is concerned with or engaged in the sale of the lines of glassware covered by such published prices, it considers the same as fair prices, but it has never been and is not now under any obligation to maintain or adhere to such prices or any of them, and it has never had and does not now have any agreement or understanding which in any way involves such prices or any of them or which in any way limits its business policy in connection with the sale of its products or in connection with the prices charged therefor; that from time to time defendant Ball Brothers announces to its customers throughout the United States its prices for fruit jars as *manufactured by it for sale to the domestic (household) trade,* but it has never been and is not now under any obligation to any competitor to maintain or adhere to any price so announced, and it has never had and does not now have any agreement or understanding which in any way involves such prices or any of them or which in any way limits the freedom of its business policy in connection with the sale of fruit jars or any of other of its products or the prices charged therefor.

As to Allegations re Espionage and Similar Tactics by Hartford, Owens and Corning

82. As to paragraphs 181 to 187, inclusive, of the complaint, and the bills of particulars filed in connection there-

with, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of any of the averments thereof, except they deny, with reference to paragraph 182, that Hartford's license agreements with Ball Brothers (agreement of March 25, 1933) gives Hartford the right to enter any of the property of Ball Brothers and inspect machinery and equipment and [fol. 358] by way of affirmative defense and in amplification of such denial, aver that the agreement in question only gives duly authorized agents or employees of Hartford-Empire Company access to Ball feeders or leased single feeders for the purpose of inspecting the same and their operation and use.

As to Allegations re Volume of Business and Profit.

83. As to paragraph 188 of the complaint, Answering Defendants deny each and every averment thereof insofar as they relate to, affect, or in any way involve Answering Defendants, or any of them, but are without knowledge or information sufficient to form a belief as to the truth of the same insofar as they apply to the other defendants named therein, and without limiting the denial above set forth, Answering Defendants specifically deny that the defendant Ball Brothers made excessive profits, deny that such profits as it made resulted from or were in any way occasioned by any conspiracy, monopoly and/or combination in restraint of trade, or resulted from any agreement or understanding or concerted effort to maintain prices.

84. As to paragraphs 189 to 195, inclusive, of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of any of the averments there set forth.

85. As to paragraph 196 of the complaint, Answering Defendants deny the averments thereof and, by way of affirmative defense and in amplification of such denial, aver that except for the year 1937 defendant Ball Brothers has not made substantial earnings during the last several years; that the amounts averred in paragraph 196 of the complaint in connection with sales and profit for the year 1937 are substantially correct, except that they are not based solely [fol. 359] on the manufacture and sale of glassware.

86. As to paragraphs 197 and 198 of the complaint, Answering Defendants are without knowledge and information sufficient to form a belief as to the truth of the averments thereof.

As to Allegations re Restrictions on Machinery and Restrictions on Use and Production of Glass Containers.

87. As to paragraph 199 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except they deny the averment that Owens has never sold any of its glass-container machines and in amplification of such denial, aver that "suction machines" licensed to Ball Brothers by Owens, under the agreement of November 2, 1924, referred to in paragraph 144 of the complaint, became the property of Ball Brothers at the expiration of said agreement, to-wit, on June 6, 1933, and are now the property of Ball Brothers, all as set forth in paragraph 50 hereof.

As to Allegations re Restrictions on Machines.

88. As to paragraph 200 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except that they deny the past or present existence or the furthering of any conspiracy, monopoly, or combination in restraint of trade in which they or any of them have been or now are in any way involved.

89. As to paragraph 201 of the complaint, Answering Defendants deny each and every averment thereof insofar as [fol. 360] they relate to, affect or involve Answering Defendants, or any of them except they admit that the aforesaid expired agreement of November 2, 1924 between Ball Brothers and Owens-Illinois Glass Company and the aforesaid agreement of March 25, 1933 between Ball Brothers and Hartford-Empire Company contain provisions relating to improvements on licensed machinery, and reference is made to such agreements for full and accurate statements thereof; and except that they are without knowledge or information sufficient to form a belief as to the truth of the averments of said paragraph 201 insofar as they relate to, affect or involve defendants other than Answering Defendants.

90. As to paragraph 202 of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except that they deny the same insofar as they relate to, affect or involve the Answering Defendants, and particularly the defendant Ball Brothers and, by way of affirmative defense and in amplification of such denial, aver that the written agreement between defendant Hartford-Empire Company and defendant Ball Brothers, referred to in the complaint as the agreement of March 25, 1933, and also the now expired, written agreement between the defendant Ball Brothers and defendant Owens-Illinois Glass Company, referred to in the complaint as the agreement of November 2, 1924, each includes a covenant under which the licensee agrees not to contest the validity of any patents under which it is licensed, but that such covenant is only effective during the life of the agreement and that while each such covenant relates to or involves patents acquired by the licensor subsequent to the date of the agreement, it only relates to such subsequent patents as are acquired by the licensor during the life of the agreement and under which the licensee obtains a license.

[fol. 361] 91. As to paragraph 203 of the complaint, Answering Defendants deny each and every averment thereof insofar as they relate to, affect or involve Answering Defendants, or any of them, and particularly defendant Ball Brothers, but they are without knowledge or information sufficient to form a belief as to the truth of such averments insofar as they relate to, affect or involve defendants other than Answering Defendants.

92. As to paragraph 204 of the complaint, and the bills of particulars filed in connection therewith, Answering Defendants deny the averments thereof insofar as they relate to, affect or in any way involve Answering Defendants or any of them and, on information and belief, deny such averments insofar as they relate to, affect or involve defendants other than Answering Defendants and by way of affirmative defense and in amplification of such denial, aver that while the aforementioned agreement of March 25, 1933 between the defendant Hartford-Empire Company and the defendant Ball Brothers places a limitation upon the number of *licensed* feeder machines to be used by Ball Brothers in the manufacture of glassware other than fruit

jars, as that term is defined in paragraph 4 hereof, that limitation only involves feeder machines covered by, or operating in accordance with procedure covered by United States patents owned or controlled by defendant Hartford-Empire Company and that Ball Brothers is neither limited as to the number nor as to the use it may make of other feeder machines.

As to Allegations re Restrictions on Use and Production of Glass Containers

93. As to paragraph 205 of the complaint and bills of particulars filed in connection therewith, Answering Defendants deny each and every averment thereof, except [fol. 362] that they are without knowledge or information sufficient to form a belief as to the truth of the averment relating to the policy of the defendants Hartford-Empire Company and Owens-Illinois Glass Company.

94. As to paragraph 206 of the complaint and the bills of particulars filed in connection therewith, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except they admit, on information and belief, that glass products manufactured and distributed by defendant Ball Brothers are not covered by any patent constituting the subject matter of any agreement between Ball Brothers and either the defendant Hartford-Empire Company or the defendant Owens-Illinois Glass Company; and except that they deny all the other averments of paragraph 206 of the complaint insofar as they relate to, affect or in any way involve Answering Defendants, or any of them, and, by way of affirmative defense and in amplification of such denial, aver that while the aforementioned agreement between the defendant Ball Brothers and the defendant Hartford-Empire Company, dated March 25, 1933, includes a limitation as to the number of feeder machines to be used by defendant Ball Brothers in the manufacture of glassware other than fruit jars—as that term is defined in paragraph 4 hereof—, that limitation only relates to feeder machines covered by, or operating in accordance with procedure covered by United States patents owned or controlled by defendant Hartford-Empire Company; that likewise such limitations as to the number and/or use of glassware-making machines as may have been contained in the afore-

mentioned and now expired agreement—dated November 2, 1924—between defendant Ball Brothers and defendant Owens-Illinois Glass Company, were only limitations in connection with glassware-making machines and/or glassware-[fol. 363] manufacturing procedure covered by United States patents then owned or controlled by defendant Owens-Illinois Glass Company and constituting the subject matter of said agreement; and that nothing in the existing agreement of March 25, 1933 has limited or now limits defendant Ball Brothers in the production and distribution of glassware made by means of machines or by means of procedure not covered by unexpired United States patents owned or controlled by defendant Hartford-Empire Company, and that nothing in the expired agreement of November 2, 1924 has limited or now limits Ball Brothers in the production of glassware made on machines or by means of procedure not covered by patents then owned by the Owens-Illinois Glass Company.

95. As to paragraph *207* of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof, except that they deny the averment that Owens, as well as Hazel-Atlas, is limited by the agreement of 1933 in the production of fruit jars, which is denied and specifically defined in paragraph 62 hereof.

96. As to paragraph *208* of the complaint and the bills of particulars filed in connection therewith, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of any of the averments thereof.

97. As to paragraph *209* of the complaint and the bills of particulars filed in connection therewith, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of any of the averments thereof, except they deny the averment that Owens has not granted a new license since 1918, and with reference thereto note the averments of paragraph 144 of the Complaint and the averments of paragraph 50 hereof in answer thereto.

[fol. 364] 98. As to paragraphs *210* to *216*, inclusive, of the complaint and the bills of particulars filed in connection therewith, Answering Defendants are without knowledge

or information sufficient to form a belief as to the truth of any of the averments thereof.

As to Allegations re Refusals to License

99. As to paragraph *217* of the complaint, Answering Defendants deny each and every averment thereof insofar as they relate to, affect or in any way involve Answering Defendants, or any of them; and they specifically deny that the defendant Ball Brothers has participated in any monopolistic control or domination in the production and/or sale of glassware machinery or glassware products manufactured therefrom or thereon and deny that it has suppressed or prevented substantial competition in the same; but Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of any of the averments of paragraph 217 of the complaint insofar as they relate to, affect or involve defendants other than Answering Defendants.

100. As to paragraph *218* of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof.

As to Allegations re Extent of Monopoly

101. As to paragraph *219* of the complaint, Answering Defendants deny that Hartford and Owens control and dominate virtually all patents on glass making machinery; but are without knowledge or information sufficient to form a belief as to the truth of the other averments of said paragraph.

[fol. 365] NOTE: *The complaint has no paragraphs numbered 220 to 224, inclusive.*

102. As to paragraphs *225* and *226* of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments thereof.

103. As to paragraph *227* of the complaint, Answering Defendants deny knowledge or information sufficient to form a belief as to the truth of the averments there set forth, except that defendants admit, on information and belief, that Owens, Hazel-Atlas, Anchor Hocking, Thatcher and Ball Brothers during the year 1937 manufactured and distrib-

uted approximately 69.55% of all glass containers, (including milk bottles and fruit jars) produced in the United States; that Owens manufactures approximately 38.03%; Hazel-Atlas approximately 16.89%; Anchor Hocking 8.01%; Thatcher approximately 2.87% and Ball Brothers approximately 3.75%.

104. As to paragraph *228* of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments there set forth.

105. As to paragraph *229* of the complaint, Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments there set forth, except they admit, on information and belief, that during the year 1937 Owens, Ball Brothers and Hazel-Atlas manufactured and distributed approximately 84.59% of the fruit jars (as defined in paragraph 4 hereof) produced in the United States; that Ball Brothers manufactured and distributed approximately 56.73% of *such* fruit jars; Hazel-[fol. 366] Atlas approximately 20.13%; Owens approximately 7.73%; and Alexander H. Kerr & Company approximately 15.41%.

106. As to paragraph *230* of the complaint, Answering Defendants deny each and every averment thereof insofar as they relate to, affect or in any way involve Answering Defendants, or any of them, but they are without knowledge or information sufficient to form a belief as to the truth of such averments insofar as they relate to, affect or involve defendants other than Answering Defendants.

Affirmative Defense

By way of affirmative defense and in further amplification of the denial of various averments of the bill of complaint, Answering Defendants aver:—

107. That Ball Brothers has been in the glassware manufacturing buisness since about 1882; that since about 1884 it has manufactured fruit jars, as that term is defined in paragraph 4 hereof, and has, employed a trade name or trademark on each such fruit jar manufactured by it for the purpose of disclosing the origin of the same to the ultimate purchasers thereof; that it has continued the manufacture and distribution of such fruit jars and for many years—at least a quarter of a century—has formed within

the glass of each such fruit jar so manufactured by it, the trademark "Ball" in association with the words "Perfect Mason" for the purpose of informing the public and particularly the users of such jars, that they are the product of Ball Brothers; that throughout the entire period from about 1884 to date, Ball Brothers has carefully selected materials and has used the utmost care in selecting and/or producing the fittings therefor (closure caps and rubber [fol. 367] sealing rings) and has also resorted to rigorous inspection of all such jars, caps and rubber rings sold and distributed by it in an effort to deliver to the trade, under its trade name or trademark, only fruit jars and fittings capable of being easily and effectively employed in home canning and preserving of food and that Ball Brothers has in the past enjoyed and now enjoys a favorable reputation with the users of such fruit jars as to the high quality and reliability of the same;

108. that since about 1884 Ball Brothers has not only advertised such fruit jars as manufactured by it, but has advertised them with the intent of impressing upon the users thereof that fruit jars bearing its trade-mark or trade name are manufactured by it, and has employed instructive pamphlets, in connection with its advertising for the purpose of instructing the housewife not only in the use of glass fruit jars, but also as to highly effective canning and preserving procedures to be employed therewith and has thereby and by its care in the manufacture and distribution of such fruit jars, extended its business and the favorable reputation of such fruit jars manufactured by it, into every State of the United States;

109. that since 1884 Brothers has not only expanded its fruit jar and general glassware business, but has also expanded into other affiliated industrial lines, with the result that as commercial conditions demanded it has either expanded its manufacturing and storage facilities at Muncie, Indiana, or has purchased operating glass plants producing and/or capable of producing glass containers, including fruit jars as that term is defined in paragraph 4 hereof; that in 1925 the business of Ball Brothers had grown to such proportions that its officers determined to expand its manufacturing facilties and, in fulfillment of [fol. 368] that determination, purchased the business of the Schram Manufacturing Company, as is set forth in para-

graph 51 hereof; that in 1929 a similar condition occasioned the purchase of the Pine Glass Company, as is set forth in paragraph 51 hereof; and that in both instances properties so purchased were not only used in the manufacture of glass containers generally, including fruit jars as that term is defined in paragraph 4 hereof, but in some instances were equipped with new and improved or additional machinery for the purpose of increasing the effectiveness of their manufacturing facilities; that in 1936 Ball Brothers purchased the business of Three Rivers Glass Company and the property of that company located at Three Rivers, Texas, as is set forth in paragraph 65 hereof; that such purchase was for the purpose of extending Ball Brothers' facilities, and particularly its facilities for meeting competition in the particular locality including and surrounding Three Rivers, Texas; and that all properties owned or controlled by Ball Brothers are used in connection with its business of manufacturing and distributing its products and that the extent of such use is dependent upon variations in commercial conditions and the variations in the commercial demand for such products;

110. that throughout its entire existence Ball Brothers has always attempted to pursue a policy of employing highly effective and up to date machinery in connection with its manufacturing operations and has either developed and manufactured such machinery itself or purchased the same from others; that in line with this policy it acquired the now expired license under patents owned by defendant Owens-Illinois Glass Company and/or its predecessor and used so called "Owens suction machines", referred to in paragraph 50 hereof, and it also developed and perfected the aforementioned Ball feeders which have been used commercially and continuously by it since about 1928, in [fol. 369] connection with some of its glassware manufacturing operations and which it considers to be highly effective in connection with such operations;

111. that the commercial use of such Ball feeders occasioned threats of patent infringement by the defendant Hartford-Empire Company, which threats were, in effect ignored by the officials of Ball Brothers until the United States Circuit Court of Appeals for the Third Circuit in the case of *Hartford-Empire Co. v. Habel-Atlas Glass Co.* (59 F. (2d) 399) held the patent there in suit to be valid and in extremely broad scope, whereupon Ball Brothers

not only gave heed to the aforesaid threats of infringement, but also entered into the aforesaid agreement of March 25, 1933 and thereby accepted a license, under United States patents owned and/or controlled by defendant Hartford-Empire Company, to continue to use such Ball feeders in its glass manufacturing operations; and

112. that with respect to the manufactures of glass containers (including fruit jars) and fittings therefor, Ball Brothers employs different types and kinds of glassware-making machinery and different kinds of glass feeders or glass feeding machinery; that some such machinery is of its own manufacture and is in no way dominated by adversely owned United States patents; that some such machinery such, for example, as the aforementioned Owens suction machines, was acquired by it in connection with rights under now expired United States patents and is therefore free from the domination of any patent monopoly; whereas other of such machinery, such as the Lynch forming machines, mentioned in paragraph 68 hereof, and the aforementioned Ball feeders are subject to the claim that they are covered by United States patents owned by either the [fol. 370] defendant Lynch Corporation or the defendant Hartford-Empire Company; and that it (Ball Brothers) attempts to suit all such machinery employed by it to the particular manufacturing operation involved, with the purpose of most effectively meeting competitive conditions existing within the glassware manufacturing industry, and that it acquired the aforementioned license, under the now expired agreement of November 2, 1924 with Owens-Illinois Glass Company, and the existing license, under the aforementioned agreement of March 25, 1933 with defendant Hartford-Empire Company, in order to effectively meet such competitive conditions and to avoid such for patent infringement while doing so.

Wherefore, Answering Defendants pray that the complaint be dismissed as to them, with costs.

(S) E. W. McCallister, Esq. (Grant Building Pittsburgh, Pa.), Everett Warner, Esq. (Western Reserve Bldg. Muncie, Ind.); (S) Wilber Owen, Esq. (Nicholas Building Toledo, Ohio), *Solicitors and Council for Ball Brothers Company, Frank C. Ball, George A. Ball, E. Arthur Ball, W. H. Ball, Edmund F. Ball, A. M. Bracken and Fred J. Petty.*

March 7th, 1940.

[fol. 371] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE DEFENDANTS ANCHOR HOCKING GLASS CORPORATION, ET AL—Filed March 8, 1940.

Now come the defendants Anchor Hocking Glass Corporation (sometimes hereinafter referred to as "Anchor Hocking"), Isaac J. Collins, J. D. Dilworth, W. V. Fisher, [fol. 372] T. C. Fulton, Herman Krannert, V. E. Macy, Jr., J. K. Moffett, Ernest Stauffen, Jr., L. B. Williams, J. O. Deegan, B. E. Factor, C. D. King, H. J. Carr, H. C. Laughlin, H. J. Hamlin and F. B. Schlub, and each of them (and each severally answer the complaint herein (as supplemented by plaintiff's various bills of particulars) as follows:

Each numbered paragraph of this answer corresponds with and is addressed to the averments contained in the like numbered paragraph of the complaint.

Alleged "Jurisdiction and Venue"

1. Admit that jurisdiction is sought to be invoked herein under and pursuant to Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," said act being commonly known as the "Sherman Anti-Trust Act," and under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 730, as amended, said act being commonly known as the "Clayton Act," to prevent what plaintiff alleges in said complaint are violations of Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act.

Deny that these answering defendants or any of them have violated, are now violating or threaten or intend to violate the Sherman Act or the Clayton Act, or either of them, in the respects alleged in said complaint or otherwise, and deny knowledge or information sufficient to form a belief as to whether or not any one or more of the other defendants have violated, are now violating, or threaten or intend to violate either or both of said acts

[fol. 373] 2. Admit that the defendant Owens-Illinois Glass Company conducts its business and is found within the Northern District of Ohio, Western Division, and that interstate trade and commerce involved in the glass industry is carried on in part within such district and division. Deny each and every other averment contained in paragraph 2 of the complaint in so far as they in any way relate to or affect these answering defendants, and deny knowledge or information sufficient to form a belief as to the truth of any of said other averments in so far as they may relate to or affect the other defendants.

Alleged "Description of Defendants"

3. Upon information and belief admit that the defendant Hartford-Empire Company is a corporation organized and existing under the laws of the State of Delaware, with its principal office at Hartford, Connecticut, that it owns patents and is engaged in the acquisition and development of inventions and patents relating to machinery for the manufacture of glassware and the leasing and licensing of such machinery, aver that it does not commercially manufacture glass-making machinery or glassware of any kind, but deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

4. Upon information and belief admit that the defendant Corning Glass Works is a corporation with its principal office at Corning, New York, and that with its subsidiaries it is one of the largest manufacturers and distributors of glass products in the United States, and is engaged principally in the production and distribution of incandescent [fol. 374] bulbs, signal and optical ware, heat resisting ware and other forms of specialty ware. Deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

5. Upon information and belief admit that the defendant Empire Machine Company is a corporation which owns over 40% of the stock of the defendant Hartford, but deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

6. Upon information and belief admit that the defendants Alanson B. Houghton, Amory Houghton, and Arthur A. Houghton, Jr., are directors of Houghton Associates, Inc., and that said Houghton Associates, Inc., owns 40% of the stock of the defendant Corning; that the defendants Amory Houghton and Alexander D. Falck have been and now are officers and directors of the defendants Corning, Empire Machine and Hartford. Deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

7 through 9. Upon information and belief admit the averments contained in said paragraphs of the complaint.

10. Upon information and belief, admit that the defendant, Lynch Corporation, is a corporation organized and existing under the laws of the State of Indiana, with its principal office at Anderson, Indiana, and that it is one of the largest makers of forming machines for the manufacture of glassware in the United States, but deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

[fol. 375] 11. Admit that the defendant Anchor Hocking Glass Corporation is a corporation organized and existing under the laws of the State of Delaware, but aver that its prinicpal office is at Wilmington, Delaware, and its business headquarters at Lancaster, Ohio. Admit that it was originally incorporated under the name of Anchor Cap Corporation in 1928 and that it changed its name to Anchor Hocking Glass Corporation, but aver that the same took place on December 31, 1937, and that such change in name was immediately prior to the acquisition by it of the assets of Hocking Glass Company. Deny that it acquired the assets of any other companies prior to its change of name aforesaid. Upon information and belief admit that with its subsidiaries it is the third largest manufacturer and distributor of glass containers in the United States.

12. Upon information and belief admit that Illinois Glass Company was organized under the laws of the State of Illinois and that it sold a substantial part of its

assets to the defendant Owens in or about 1929, but deny knowledge or information sufficient to form a belief as to the date of its incorporation.

Upon information and belief admit that between prior to 1929 and some time in 1938 Illinois Glass Company owned stock in the defendants Owens, Hazel-Atlas, Lynch and Thatcher, but deny knowledge or information sufficient to form a belief as to the amounts so owned or as to whether or not the same constituted substantial blocks thereof.

As to the defendant Anchor Hocking, aver that in 1938 prior to its dissolution Illinois Glass Company owned 48,369 common shares out of a total of 715,550 shares then [fol. 376] outstanding, which constituted less than 7% of the capital stock of Anchor Hocking then issued and outstanding.

Upon information and belief admit that in 1938 the stock owned by Illinois Glass Company in these various companies was distributed pro rata to its stockholders, including those individual defendants named in said paragraph. Deny knowledge or information sufficient to form a belief as to the relationship or financial connection between the individual defendants named in said paragraph and the defendants William E. Levis and R. H. Levis, except as to the defendant Isaac J. Collins, with respect to whom these defendants deny that he now is or ever was either closely related to or financially connected with either or both of the defendants William E. Levis and R. H. Levis, or now is or ever was a member of "the Levis Group" referred to in said paragraph of the complaint.

As to the allegations made in the bill of particulars filed by the plaintiff in response to motion of defendants Anchor Hocking Glass Corporation, et al. (hereinafter called "Anchor Hocking's bill of particulars"), supplementing the allegations of paragraph 12 of the complaint, deny that defendant Isaac J. Collins was ever a large stockholder in Illinois Glass Company, and deny that he ever owned any stock whatsoever of said company until on or about January 20, 1938. Aver that on or about that date he purchased as an investment 700 shares of stock of Illinois Glass Company, and that at said time there was a total of 259,940 shares of said company issued and outstanding, and aver that said 700 shares of stock represented

all of the shares of stock at any time owned by the de-
[fol. 377] fendant Isaac J. Collins in Illinois Glass Company. Admit that said defendant Isaac J. Collins is President of Anchor Hocking Glass Corporation and was formerly President of Hocking Glass Company and of General Glass Company, but deny that the defendants William E. Levis or R. H. Levis, or either of them, were at any time holders of any stock or securities (except as hereinafter stated), or otherwise financially interested in, Hocking Glass Company, General Glass Company or Anchor Hocking Glass Corporation, except as stockholders of Illinois Glass Company, which said company at or about the time the name of Anchor Cap Company was changed to Anchor Hocking Glass Corporation (December 31, 1937), acquired slightly less than 7% of the outstanding stock of Anchor Hocking Glass Corporation, and aver that in 1938 when the Illinois Glass Company was dissolved and the stock owned by it in various companies, including Anchor Hocking, was distributed pro rata to its stockholders, the defendants William E. Levis and R. H. Levis received in such distribution their pro rata share of Anchor Hocking's stock, which in each case aggregated less than 1% of the stock of Anchor Hocking then outstanding. Shortly thereafter the defendant William E. Levis disposed of said stock of Anchor Hocking, and ceased to be and since said time has not been, and no longer is a stockholder of Anchor Hocking. Deny that said facts constituted any financial interest on the part of said William E. Levis or R. H. Levis, or either of them, in Anchor Hocking Glass Corporation different from that of any other of its many shareholders and deny that said facts disclose or warrant the alleged conclusion that the defendant Isaac J. Collins was "either
[fol. 378] closely related to or financially connected with, the defendants William E. Levis and R. H. Levis." Deny that the individual defendants named in paragraph 12 of the complaint and the individuals named in subparagraph d of paragraph I of said bill of particulars, at any time either constituted or were known in the industry as the "Levis Group." Deny that defendant Isaac J. Collins became a member of any group at any time made up of the persons named in paragraph 12 of the complaint and in paragraph I (d) of said bill of particulars, and aver that said defendant Collins never met with, cooperated with, or acted in concert with the individuals so named in any of the

respects averred in the complaint or in said bill of particulars. Deny each and every averment contained in said paragraph of the complaint as supplemented by paragraphs I (a), I (b), I (c), and I (d) of Anchor Hocking's bill of particulars not herein expressly admitted to be true.

13 and 14. Upon information and belief admit the averments contained in said paragraphs of the complaint.

15. Admit the averments contained in said paragraph of the complaint, except deny knowledge or information sufficient to form a belief as to whether or not the defendant Glass Container Association of America, Inc., includes all but two of the glass container manufacturers in the United States.

16. Admit that the defendant Charles R. Stevenson since in or about March, 1928, has been and now is business manager of the defendant Glass Container Association, and that the defendant Emory G. Ackerman since in or about October, 1929, has been and now is assistant business manager of said association, but deny knowledge or informa-[fol. 379] tion sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

17 through 24. Upon information and belief admit that the individual defendants named in said paragraphs of the complaint have been or are officers or directors of and as such have participated in the direction and management of the respective corporate defendants as therein averred. Deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraphs of the complaint.

25. Admit that the individual defendants Isaac J. Collins, J. D. Dilworth, W. V. Fisher, T. C. Fulton, Herman Krannert, V. E. Macy, Jr., J. K. Moffett, Ernest Stauffen, Jr., L. B. Williams, G. F. Rieman, J. O. Deegan, B. E. Factor, C. D. King, H. J. Carr, H. C. Laughlin, H. J. Hamlin and F. B. Schlub have been at one time or another officers or directors, and as such have perticipated while occupying such positions in the direction and management of the defendant Anchor Hocking. Admit that some of such individual defendants have approved, authorized, ordered and done some of the acts alleged in the complaint to have

been performed by defendant Anchor Hocking, but deny that any of such acts was done in pursuance of any conspiracy to violate the anti-trust laws of the United States or was in violation thereof or was otherwise unlawful, and deny that said individual defendants V. E. Macy, Jr., J. K. Moffett, G. F. Rieman, H. J. Carr or H. J. Hamlin are now either officers or directors of the defendant Anchor Hocking.

Deny each and every averment in said paragraph not herein expressly admitted to be true.

[fol. 380] 26. Upon information and belief admit that the individual defendants named in said paragraph of the complaint have been or now are officers or directors and as such have participated in the direction and management of defendant Ball Bros., and deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

27. Admit that the defendant Anchor Hocking is engaged in trade and commerce between and among the several states of the United States, and upon information and belief that the other corporate defendants except Empire Machine Company, Glass Container Association of America, Inc., and The Stevenson Corporation are likewise so engaged, and as to said excepted corporations deny knowledge or information sufficient to form a belief as to whether or not they are so engaged.

28. Admit that the glass machinery and various kinds of glassware referred to in the complaint are manufactured in various localities and are shipped and distributed through the channels of interstate trade and commerce.

Alleged "Description and Early History of Glassware Industry"

29. Admit that the glass container division as described in paragraph 29 of the complaint is to some extent independent for commercial purposes from the other branches of glass manufacture listed in said paragraph, and that in said glass container division there are produced the products therein averred, but deny that the term "pressed and blown glassware division" is a correct description of [fol. 381] the balance of the glassware industry described

in such paragraph (with the exceptions stated in said paragraph 29), and aver that it would be more accurately designated "glassware other than glass containers," since it includes pressed, blown, and pressed and blown glassware, and admit that the glassware products described in said paragraph as produced in the "pressed and blown glassware division" are produced by various manufacturers.

30. Upon information and belief admit that prior to 1905 glassware in the United States was made principally by hand or by semi-automatic machinery; that in or about 1905 one Michael J. Owens invented an automatic suction machine, and that a machine was made embodying said invention; that subsequent thereto the methods of producing certain, but not all, types of glassware were improved to such an extent that the use of automatic machinery in the production of said types of glassware became necessary for the competitive commercial production thereof; but aver that as to certain other types of glassware competitive commercial production continued to be and still is in existence without the use of automatic machinery. Admit that Michael J. Owens (not Michael F. Owens as alleged in the complaint) was at one time associated with the predecessor of the defendant Owens.

Upon information and belief, admit that the defendant Owens from time to time between 1905 and 1917 owned various patents and inventions for the manufacture of glassware machinery known as the suction method, and that it leased such machinery to other manufacturers of glassware under license agreements, concerning the terms [fol. 382] and conditions of which these answering defendants have no knowledge or information sufficient to form a belief.

Deny each and every averment in said paragraph not herein expressly admitted to be true.

31. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint.

32. Upon information and belief, admit that prior to 1916, Hartford-Fairmont, the predecessor of defendant Hartford, was organized and that Hartford-Fairmont developed automatic gob feeders for use with other equipment

in the production of glass containers and blown glassware, and that such feeders when used with such additional equipment, were used to produce certain types of glass containers and blown glassware in competition with the then existing Owens suction machines, and deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

33. Admit that for a number of years last past there have been in use commercial methods for manufacturing glass containers and other blown glassware by machines of the general character described in the several sub-paragraphs of paragraph 33, but aver that since 1916 there have been and there now are commercial methods in use for the manufacturing of glass containers and other blown glassware other than those described in said paragraph 33.

As to subparagraph (b) of paragraph 33, upon information and belief deny that Owens now claims to control the suction process for the manufacture of glassware, but [fol. 383] admit that since 1916 the defendant Hartford has claimed control of the gob-feeding method; deny that since 1916 the suction and gob-feeding methods have been virtually the only commercially practical methods of making glass containers and other blown glassware, and deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in subparagraphs (b), (c) and (d) of paragraph 33. As to paragraphs 1 (a), (b), and (c), 2 (a), (b), and (c), and 3 (a), and (b) of plaintiff's bill of particulars in response to motion of defendants, Hartford-Empire Company *et al.* (hereinafter called "Hartford's bill of particulars"), paragraph 1 of plaintiff's bill of particulars in response to motion of defendants, Owens-Illinois Glass Company *et al.* (hereinafter called "Owens' bill of particulars"), and paragraphs 1 (a) and (b) of plaintiff's bill of particulars in response to motion of defendants, Lynch Corporation *et al.* (hereinafter called "Lynch Corporation's bill of particulars"), all supplementing subparagraphs (b), (c) and (d) of said paragraph 33 of the complaint, deny that these answering defendants, or any of them, ever performed or joined in performing any of the acts or did or joined in doing any of the things alleged in said paragraphs of said

bills of particulars to have been performed or done by them except to the extent expressly admitted or averred in paragraphs of this answer bearing numbers corresponding to the numbered paragraphs of the complaint enumerated in the foregoing paragraphs of said bills of particulars; and deny knowledge or information sufficient to form a belief as to whether the other defendants, or any of them, performed any of said acts or did or joined in the doing of any [fol. 384] of said things, except as the same may be admitted or averred in the paragraphs of this answer bearing numbers corresponding to the numbered paragraphs of the complaint enumerated in said paragraphs of said bills of particulars.

Alleged "Offenses Charged"

34. Deny that Anchor Hocking or any of these answering defendants have done or joined in the doing of any of the things alleged in paragraph 34, or any of the things elsewhere alleged in said complaint to have been done by them or as alleged in paragraphs 4 (a) and (b) of Hartford's bill of particulars, paragraph 2 of Owens' bill of particulars, and paragraphs 1 (a) and (b) of plaintiff's bill of particulars in response to motion of defendants, Ball Brothers, *et al.*, (hereinafter called "Ball Brothers' bill of particulars"), supplementing said paragraph 34 of the complaint, except as these defendants expressly admit or aver the truth thereof in the numbered paragraphs of this answer corresponding to the numbered paragraphs of the complaint enumerated in said paragraphs of said bills of particulars, and deny that they or any of them have violated or are now violating Sections 1 or 2 of Sherman Act or Section 3 of the Clayton Act in any of the particulars or by any of the methods set forth in the complaint or said bills of particulars or otherwise, and deny knowledge or information sufficient to form a belief as to whether the other defendants have violated or are now violating said sections of the Sherman and Clayton Acts as alleged and as to whether any of the other defendants have performed any of the acts or done any of the things alleged in said paragraphs [fol. 385] of the complaint as supplemented by said bills of particulars and elsewhere alleged in said complaint to have been done by them, except as in this answer expressly admitted or averred.

Alleged "Formation and Continuation of the Conspiracy"

35. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint (as supplemented by paragraphs 5 (a), (b), (c-1) and (c-2) of Hartford's bills of particulars in response to motion of defendants, Corning Glass Works, *et al.* (hereinafter called "Corning's bill of particulars"), paragraph 2 of Ball Brothers' bill of particulars, and paragraphs 3 (a) and (b) of Owens' bill of particulars) except as expressly admitted or averred in the paragraphs of this answer bearing numbers corresponding to the numbered paragraphs of the complaint enumerated in said paragraphs of said bills of particulars, and except that defendant Dilworth denies each and every averment contained in any of said paragraphs of said bills of particulars in so far as they specifically relate to him.

36. Deny that the defendant Anchor Hocking or any of these answering defendants through Hocking Glass Company, or otherwise, from time to time or at any time joined the alleged principal conspiracy referred to in said paragraph of the complaint (as supplemented by paragraph 6 of Hartford's bill of particulars, paragraph 3 (c) of Owens' bill of particulars, paragraphs 3 (a), (b) and (c) of Ball Brothers' bill of particulars, and paragraphs I (e) and II [fol. 386] (a), (b) and (c) of Corning's bill of particulars) or became participants therein or joined any other unlawful conspiracies, monopolies or restraints of trade incidental to or a part of such alleged principal conspiracy, monopoly and combination in restraint of trade as alleged in said complaint supplemented as aforesaid, or in any other way, and deny knowledge or information sufficient to form a belief as to whether such alleged conspiracies or any of them were ever formed or participated in by the other defendants, or any of them, and as to whether any of the other defendants performed any of the acts or did any of the things thereafter alleged in said complaint as supplemented by the bills of particulars, except as in this answer expressly admitted or averred.

37. Deny that the defendant Anchor Hocking or any of these answering defendants have conspired or are now con-

spiring unlawfully to attempt to monopolize or to monopolize, or have unlawfully combined or are now combining to restrain trade, or that any of these answering defendants have maintained or are maintaining any unlawful monopoly or unlawful monopolies, or that any of these answering defendants have unlawfully restrained or now are unlawfully restraining trade among and between the several states of the United States as averred in said paragraph of the complaint (as supplemented by paragraph 4 of Ball Brothers' bill of particulars) or otherwise. Deny knowledge of information sufficient to form a belief as to the truth of the averments of said paragraph as so supplemented with respect to the other defendants except in so far as certain acts on the part of them or some of them are expressly in this answer admitted or averred.

[fol. 387] 38. Deny that Anchor Hocking or any of these answering defendants have at any time joined, by any means or in any manner participated in, or furthered, or at any time been a party to any of the unlawful conspiracies, monopolies, and combinations in restraint of trade referred to in said complaint, and deny that Anchor Hocking or any of these answering defendants have done any of the things alleged in paragraph 38, and deny that they or any of them have done any of the things elsewhere alleged in said complaint to have been done by them, except as in this answer expressly admitted or averred, and deny knowledge or information sufficient to form a belief as to whether the other defendants have at any time joined, by any means or in any manner participated in, or furthered, or at any time been a party to any of the unlawful conspiracies, monopolies, and combinations in restraint of trade referred to in said complaint, and as to whether any of the other defendants have done any of the things alleged in said paragraph and elsewhere in said complaint to have been done by them except as in this answer expressly admitted or averred.

Alleged "Hartford-Corning Agreements of 1916 and 1922"

39 and 40. Deny knowledge or information sufficient to form a belief as to the truth of any averments contained in said paragraphs of the complaint.

41. Upon information and belief admit that in 1916 Hartford-Fairmont and defendant Empire Machine entered into an agreement relative to certain patents, but deny knowledge or information sufficient to form a belief as to the nature of provisions thereof or as to the truth of any [fol. 388] of the other averments contained in said paragraph of the complaint.

42. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint.

43. Upon information and belief admit that in 1922 the defendants Hartford, Corning and Empire Machine with Hartford-Fairmont entered into an agreement relative to certain patents, but deny knowledge or information sufficient to form a belief as to the detailed provisions thereof or as to the truth of any of the other averments contained in said paragraph of the complaint.

44. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint, except upon information and belief admit that under the agreement referred to in paragraph 43 hereof Hartford purported to grant to Corning an exclusive license in the field of heat resisting ware as defined in said agreement with respect to certain types of equipment alleged to be covered by Hartford patents.

45. Upon information and belief admit that subsequent to 1916 and up to the present time Hartford (or its predecessor Hartford-Fairmont) has issued licenses to a number of glassware manufacturers for the production of different types of glassware, and that all licenses of Hartford covering the use of feeders and formers other than those to Corning contain an express prohibition against the use of such feeders and formers licensed thereunder for the manufacturer of glass bulbs and heat resisting ware as defined in such licenses, but deny that such express prohibitions extend to all other types of pressed and blown glassware.

[fol. 389] 46. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint. Upon information and belief aver that Corning has in the past and now

is manufacturing certain types of glass containers, but these defendants deny knowledge or information sufficient to form a belief as to whether such glass containers are manufactured with machinery covered by Hartford patents.

47. Upon information and belief admit that prior to 1922 Corning or Empire Machine Company owned certain patents purporting to cover glass composition formulae for heat resisting ware, but deny knowledge or information sufficient to form a belief as to the validity of such patents, and admit that such patents expired in 1936.

48. Upon information and belief admit that except for a limited license in 1920 to Fry Glass Company and a limited license to McKee Glass Company in 1921 it had been the policy of defendant Corning to refuse to license others in the United States under its patents for heat resisting ware referred to in paragraph 47 of the complaint, and admit that this policy continued until the expiration of such patents and now continues with respect to other patents relating to the manufacturer of heat resisting ware, and was and is aided by an alleged exclusive license from Hartford to Corning in the field of heat resisting ware with respect to feeders and formers, and by Hartford's policy of expressly attempting to prohibit in its other feeder and former licenses the manufacture by its other licenses of heat resisting ware, but deny that it has been Hartford's policy to refuse to permit any of its other licensees to manufacture [fol. 390] other types of pressed and blown glassware.

49 and 50. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraphs of the complaint.

51. Deny that in 1937 Anchor Hocking made preparations and intended to engage in the manufacture of heat resisting ware, but aver that the Hocking Glass Company, the assets of which were purchased by Anchor Hocking December 31, 1937, did in 1937 and prior thereto engage in experiments relating to the manufacture of heat resisting ware and considered engaging in the manufacture thereof. Deny that Anchor Hocking or the Hocking Glass Company at the request of defendants Corning, Hartford and Owens, or any of them, or otherwise, have ever agreed, orally or in writing, with defendants Corning, Hartford and Owens, or any of them, or with anyone, not to engage in the business of manu-

facturing heat resisting ware without first obtaining the consent of defendant Corning. Deny that C. B. Belknap ever represented or purported to represent defendants Corning, Hartford and Owens, or any of them, in connection with the making of any such agreement, and deny that Isaac J. Collins ever represented or purported to represent Anchor Hocking or Hocking Glass Company in connection with the making of any such agreement. Admit that at no time since 1937 has defendant Anchor Hocking engaged on a commercial basis in manufacturing heat resisting ware. Further answering said paragraph, aver that all of the licenses and leases on Hartford feeders and formers held by Anchor Hocking contain an express provision purporting to prohibit the manufacture with equipment covered thereby [fol. 391] of heat resisting ware as defined therein, including ware made by the formulae described in the expired Corning patents referred to in paragraph 47 of the complaint; that Anchor Hocking has objected to such restrictions but has not disregarded the same in view of the fact that such action might result in cancellation of its existing license and leases or in costly infringement litigation, or in the repossession by Hartford of the equipment held by the defendant Anchor Hocking under such leases without refund of the large initial license fees paid therefor, and that Anchor Hocking has requested a waiver of such restrictions from both Hartford and Corning, but that such requests have to date been refused. Deny each and every averment contained in said paragraph of the complaint, as supplemented by paragraphs II (a), (b), (c) and (d) of Anchor Hocking's bill of particulars, not herein expressly admitted to be true.

52. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint, but aver that defendant Corning manufactures substantially all the machine made heat resisting ware sold in the United States, and that the license relationships and policies of defendants Hartford and Corning, as hereinbefore admitted or averred, materially aid defendant Corning in maintaining such dominant position in the industry.

[fol. 392] Alleged "Hartford-Owens Relations"

Alleged "Early Controversies Between Hartford and Owens Regarding Patents"

53. Upon information and belief admit that prior to 1917 Owens had issued licenses on such machines to various manufacturers and that some of said licenses contained certain restrictions, the extent and character of which are unknown to these defendants, but deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

54. Admit upon information and belief that in 1915 Hartford-Fairmont put on the market a glass container feeder machine and licensed various glass container manufacturers, some of whom were Owens' licensees, to use the same, but deny knowledge or information sufficient to form a belief as to whether or not the royalty percentage payments thereon were less than those charged by Owens, or the initial license fee thereon was less than on Owens machines, or Hartford machines were less expensive to operate.

55 through 59. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraphs of the complaint, except admit the averment in paragraph 56 that in 1923 Hartford sued Berney-Bond Company, and the averment in paragraph 58 that Owens sued J. T. & A. Hamilton Company, and the averment in paragraph 59 that in 1923 Hartford sued United States Glass Company.

[fol. 393] Alleged "Owens-Hartford 1924 Agreement"

60 and 61. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraphs of the complaint.

62. Upon information and belief admit that on or about April 9, 1924, Hartford, Owens and others entered into an agreement entitled "General License Agreement," but deny knowledge or information sufficient to form a belief as to the intent or interpretation of said agreement as set forth in said paragraph. Upon information and belief deny that Hartford had previously reserved to defendant Corning the use of Hartford patents in the entire pressed and blown glassware field.

63. Upon information and belief admit that under said agreement Hartford agreed to pay Owens one-half of Hartford's "divisible income" from feeding and forming machine inventions, such "divisible income" being Hartford's yearly income, less $600,000, from royalties, fees and receipts as defined under the agreement, but deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

64. Admit that the effect of the provision in the 1924 agreement with regard to the payments to be made by Hartford to Owens of one-half of the "divisible income" in excess of $600,000.00, as defined in said agreement, was to entitle Owens to share in the income of Hartford, which largely resulted from royalty and license fees paid by Owens' competitors as licensees of Hartford.

65. Admit that the existence of the said 1924 agreement by which Owens shared in royalties and license fees paid [fol. 394] by competitors of Owens was unknown to Anchor Hocking, its subsidiaries, or its predecessor companies at the time, and continued to be unknown to them until December, 1938, when such information became public at the time of the hearings before the Temporary National Economic Committee pursuant to Public Resolution No. 113 (75th Congress). Upon information and belief aver that the defendant Hazel-Atlas acquired such information prior to August, 1932. Deny knowledge or information sufficient to form a belief as to whether Owens' other competitors had any knowledge or information concerning such agreement prior to said hearings.

66. Upon information and belief admit the averments contained in said paragraph of the complaint.

67. Upon information and belief admit that under the 1924 agreement Hartford and Owens agreed to prosecute vigorously infringement of their respective patents, but deny knowledge or information sufficient to form a belief as to whether they agreed by such agreement to share equally any expense of bringing suit on any of their respective patents.

68. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint.

69. Upon information and belief admit that the provisions of Section 22 of the 1924 agreement are substantially as set forth in said paragraph of the complaint. Deny knowledge or information sufficient to form a belief as to whether or not Hartford granted licenses either under its own patents or under those assigned to it by Owens without first obtaining the consent of Owens.

70. Deny knowledge or information sufficient to form a [fol. 395] belief as to the truth of any of the averments contained in said paragraph of the complaint.

Alleged "Patent Litigation and Acquisitions Resulting in Elimination of Competition—1924 to 1932"

71. Deny knowledge or information sufficient to form a belief as to the truth of the conclusion averred in this paragraph of the complaint except as and to the extent the facts supporting the same are in this answer expressly admitted or averred.

72. Upon information and belief admit that at the time of the making of the 1924 agreement there were a number of persons and companies independent of Hartford and Owens engaged in the business of manufacturing and distributing glass making machinery, and there were also numerous manufacturers of glass containers independent of Hartford and Owens who used glass making machinery not licensed by Hartford or Owens. Upon information and belief aver that subsequent to 1924 Hartford (Owens paying a portion of the expense) brought a number of infringement suits against users of machinery not licensed by it and acquired a number of patents, but deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments and conclusions contained in said paragraph of the complaint as supplemented by paragraphs 7 (a) and 7(b) of Hartford's bill of particulars and paragraph 4 of Owens' bill of particulars, except as and to the extent the same may have been admitted or averred in the paragraphs of this answer correspondingly numbered to those numbered paragraphs of the complaint enumerated in paragraph 7 (b) of Hartford's bill of particulars and paragraph 4 of Owens' bill of particulars. [fol. 396] 73 through 75. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraphs of the complaint.

76. Upon information and belief admit that in 1925 Hartford, with Owens sharing a portion of the cost, took an option from the Whitall Tattum Company on the Headley and Thompson patent applications relative to glass manufacturing machinery. Deny knowledge or information sufficient to form a belief as to whether in 1929 this option was extended by a new agreement between the parties.

77. Upon information and belief admit that Hartford did acquire certain patent rights of William J. Miller or the Miller Glass Engineering Company, Owens sharing a portion of the expense, but deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

78. Upon information and belief admit that Hartford brought two suits against Lamb Glass Company claiming infringement of Hartford patents, and that Owens acquired the assets of Atlantic Bottle Company, and that Hartford brought suit against F. E. Reed Glass Company, but deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

79. Upon information and belief admit that in 1925 Hartford acquired certain patents or applications for patents known as the Tucker, Reeves & Beatty patents or patent applications after Owens had filed suits against Federal Glass Company and Tucker, Reeves & Beatty claiming that the Tucker, Reeves & Beatty feeders infringed the Lott [fol. 397] patent and that Owens and Hartford shared the expense of such suits and the cost of such acquisition. Deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

80. Admit that in or about 1925 Capstan Glass Company, a Tucker, Reeves and Beatty licensee, was notified that it was claimed that the Tucker, Reeves and Beatty equipment used by it infringed patents owned by Hartford or Owens, and that thereafter it also became a licensee of Hartford. Upon information and belief admit that the Tucker, Reeves and Beatty patents were finally transferred to Hartford. Deny knowledge or information sufficient to form a belief

as to the truth of any of the remaining averments contained in said paragraph of the complaint.

81. Admit that Hartford brought suit against Nivison-Weiskopf Company, alleging that a feeder then being used by the latter infringed Hartford's patent No. 1,573,742, the inventions disclosed in which were alleged to have been invented by defendant Peiler, and other patents. Admit that in 1931 (not in 1932 as averred) while appeal was pending from a District Court decision partly in favor of Hartford, the General Glass Company, a Hartford licensee, purchased certain assets of Nivison-Weiskopf Company for $150,000, but deny that such purchase was made pursuant to any agreement between General Glass Company and Hartford that the infringement claim would be settled and that Hartford would buy the Nivison-Weiskopf patents from General Glass, or pursuant to any other agreement between General Glass Company and Hartford. Admit that in 1932 after the decree of the District Court aforesaid [fol. 398] had been partially sustained by the Circuit Court of Appeals for the Sixth Circuit, two patents which had formerly been owned by Nivison-Weiskopf Company were transferred to Hartford. Deny knowedge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint as supplemented by paragraph 8 of Hartford's bill of particulars and paragraph 5 of Owens' bill of particulars.

82. Upon information and belief admit that in 1928 the so-called Peiler "stuffing" patent No. 1,655,391 issued, but deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

83. Upon information and belief admit that Hartford has from time to time brought suit against Obear-Nester Glass Company, alleging that machinery and equipment used by Obear-Nester Glass Company infringed certain Hartford patents, but deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

84. Upon information and belief admit the averments contained in said paragraph of the complaint.

85. Upon information and belief admit that a company known as the O'Neill Machine Company prior to 1933 sold and offered for sale glass manufacturing equipment known as the Knox-O'Neill suction machine, and that such United States patent rights as the O'Neill Machine Company had were in 1933 transferred to either Hartford or Owens, but deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained [fol. 399] in said paragraph of the complaint.

86. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint.

87. Upon information and belief deny the allegations of said paragraph of the complaint. Further answering aver that in 1933 or prior thereto Capstan Glass Company developed certain experimental feeders, that Hartford claimed that such feeders infringed its patents, and that in 1933 Hartford and Capstan Glass Company entered into a letter agreement whereby in consideration of Hartford extending Capstan's feeder license agreements under Hartford's patents so as to entitle Capstan to manufacture beers and near beers, and a limited number of liquor bottles, flasks and wine bottles, Capstan agreed that so long as such extension should remain in effect it would not sell or license to others such alleged infringing feeders. By separate agreement in 1934, to remove any question as to infringement of Hartford patents by Capstan through the use of such experimental feeders, Capstan transferred title to such feeders to Hartford in consideration of a lease and license thereon by Hartford to Capstan, allowing Capstan to use such feeders on payment of certain royalties as provided in said agreement.

88. Upon information and belief admit that Hartford instituted a patent infringement suit against Swindell Brothers, Inc., but deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

89. Deny knowledge or information sufficient to form a [fol. 400] belief as to the truth of any of the averments contained in said paragraph of the complaint.

90. Upon information and belief admit that patent infringement suits brought by Hartford are now pending

against Obear-Nester Glass Company and F. E. Reed Glass Company, and admit that Hartford did in 1932 acquire certain so-called Nivison-Weiskopf feeders, but deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint as supplemented by paragraph 9 of Hartford's bill of particulars and paragraphs 6(a) and 6(b) of Owens' bill of particulars.

91. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint as supplemented by paragraphs 10(a) through (e) of Hartford's bill of particulars.

Alleged "February 4, 1931, Amendment to 1924 Agreement Between Hartford and Owens"

92. Upon information and belief admit the averments contained in said paragraph of the complaint.

93. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint.

Alleged "Hartford, Owens and Hazel-Atlas Agreements, July 1, 1932"

94. Upon information and belief admit that in or about 1932, defendant Hazel-Atlas entered into an agreement with Hartford as averred in paragraph 98 of the complaint, [fol. 401] but deny knowledge or information sufficient to form a belief as to whether the purposes thereof were those set forth in this paragraph (94) of the complaint, except as and to the extent in this answer admitted or averred.

95. Upon information and belief admit that Hartford sought to have Hazel-Atlas become a licensee of Hartford and that in or about 1926 Hartford (Owens sharing the expense) brought suit against Kearns-Gorsuch Company (a subsidiary of Hazel-Atlas) claiming the infringement of certain Hartford patents by Kearns-Gorsuch, in which suit Hartford was only partially successful. Deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

96. Upon information and belief admit that in or about 1928 Hartford brought suit (Owens sharing the expense)

against Hazel-Atlas, claiming that feeders used by Hazel-Atlas infringed Hartford's patent No. 1,655,391, called by its inventor the "stuffing" patent, which had issued in 1928, and that in 1932 the Circuit Court of Appeals for the Third Circuit held that such Hazel-Atlas feeders infringed such patent. Deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

97. Admit that Hartford and Owens entered into negotiations with Hazel-Atlas with a view towards and which resulted in the licensing of Hazel-Atlas under Hartford's patents as hereinafter admitted. Deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

[fol. 402] 98 and 99. Upon information and belief admit the averments contained in said paragraphs of the complaint.

100. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint except the averment that Hartford granted Hazel-Atlas a license under certain patents for the manufacture of glass containers.

101. Upon information and belief admit that under the Hazel-Atlas and Hartford general license agreement of July 1, 1932, Hazel-Atlas agreed to pay Hartford $1,000,000 for alleged back royalties, and that said agreement contained a provision purporting to require that Hazel-Atlas pay royalties to Hartford on all inventions licensed by the agreement and used by Hazel-Atlas, including Hazel-Atlas inventions licensed to Hartford, but aver that such purported provision was in effect nullified by Hartford's agreement which these answering defendants admit and aver was to pay Hazel-Atlas annually one-third of its "net income" as therein defined, the operation of which provision in effect gave and has given Hazel-Atlas a royalty free license plus a balance of net income out of royalties paid by Anchor Hocking, its subsidiaries and predecessors, and other Hartford licensees over and above the amount of such purported royalties payable by Hazel-Atlas. These defendants further aver that the purported consideration for such division of income and royalty free license was illusory,

but among the benefits which accrued to Hartford was the benefit of having it known that Hazel-Atlas had become a licensee of Hartford on what was represented by Hartford to other Hartford licensees, including Anchor Hocking, its [fol. 403] subsidiaries and predecessors, to be Hartford's standard royalty basis, on which basis such others were paying and continued to pay royalties.

102. Upon information and belief admit that under the general license agreement of July 1, 1932, between Hartford and Owens the April 9, 1924, agreement between said parties was canceled, but deny knowledge or information as to the details of said agreement.

103. Upon information and belief admit the averments contained in said paragraph of the complaint.

104. Upon information and belief admit that Hartford and Owens entered into an agreement entitled "Suction Inventions License Agreement" as of July 1, 1932, but deny knowledge or information as to the details of said agreement.

105. Admit that Hazel-Atlas and Owens shared in Hartford's income under the agreements referred to in said paragraph of the complaint, and upon information and belief, aver that while Owens' right to so share in Hartford's income has been terminated as averred in paragraph 126 of the complaint, Hazel-Atlas since July, 1932, has received and will continue to receive from said source, large amounts in excess of the amounts paid by Hazel-Atlas to Hartford as purported royalties, that the amounts so received by Hazel-Atlas are made up principally from royalties and license fees paid to Hartford by competitors of Hazel-Atlas and other glass manufacturers, that the net result of the foregoing is that Hazel-Atlas has had during all of said period, and now has and will continue to have until January 2, 1945, unless the contract aforesaid is terminated, a royalty free license plus a part of Hartford's income, thus placing Anchor Hocking and its subsidiaries and other [fol. 404] competitors of Hazel-Atlas at a disadvantage in competition with Hazel-Atlas.

106. Admit that the existence of the agreements between Hartford and Hazel-Atlas and Hartford and Owens dated July 1, 1932, and the facts with respect thereto admitted or averred in paragraphs 98 through 105 hereof were unknown

to these answering defendants including Anchor Hocking, its predecessor and subsidiaries, at the time, and continued to be unknown to them or any of them up to December, 1938, when such information was disclosed in connection with the hearing before the Temporary National Economic Committee, but deny knowledge or information sufficient to form a belief as to the truth of the averments contained in said paragraph of the complaint in so far as they relate to the other competitors of Owens and Hazel-Atlas.

107. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint.

108. Upon information and belief admit that averments contained in said paragraph of the complaint.

109. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint except as and to the extent in this answer expressly admitted.

110. Upon information and belief, admit that the effect of the July 1, 1932, agreement between Hartford and Hazel-Atlas was that Hazel-Atlas, then the largest manufacturer of glass containers not licensed by Hartford, became a Hartford licensee, thereby extending the sphere of Hartford's licensing in the glass container industry and that [fol. 405] thereafter Brockway Glass Company and Knox Glass Bottle Company accepted licenses from Hartford, and that Knox Glass Bottle Company and the four operating companies affiliated with it were collectively the fourth largest manufacturers of glass containers in the United States. Deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

Alleged "Hartford-Lynch Agreement, 1933"

111. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint as supplemented by paragraph 2 of Lynch Corporation's bill of particulars.

112. Upon information and belief admit that prior to 1927 defendant Lynch Corporation marketed automatic forming machines, and that in 1927 a very substantial por-

tion of the narrow necked bottle machine formers in use were these machines, and that Hartford did obtain an option on the Headley and Thompson patent applications at a time when they were pending in the United States Patent Office. Deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

113. Upon information and belief admit that on a date unknown to these defendants Hartford exercised its option to buy from Whitall and Tatum Company the Headley and Thompson patent applications or the patents issued thereon, and that one-half of the expense of acquiring such [fol. 406] patents was paid by Owens, but deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

114. Upon information and belief admit that on August 23, 1933, defendants Lynch and Hartford entered into an agreement by which certain non-exclusive cross-licenses were granted, but deny knowledge or information sufficient to form a belief as to the terms and conditions thereof.

115. Upon information and belief admit the averments contained in said paragraph of the complaint.

116 through 121. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraphs of the complaint and in paragraph 3 of Lynch Corporation's bill of particulars supplementing paragraph 119.

Alleged "Elimination of Competition in Lehrs"

122. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint as supplemented by paragraph 11 of Hartford's bill of particulars and paragraph 7 of Owens' bill of particulars, except as admitted or averred in the paragraphs of this answer correspondingly numbered to those numbered paragraphs of the complaint enumerated in said paragraphs 11 and 7 of said bills of particulars, respectively.

123. Upon information and belief admit that Hartford instituted a patent infringement suit against Swindell Brothers, Inc., claiming that certain lehrs which had been

manufactured by Amsler-Morton Company and used by [fol. 407] Swindell Brothers infringed a certain Hartford patent or certain Hartford patents, and that the Circuit Court of Appeals for the Fourth Circuit reversed in part and affirmed in part a decision of the District Court and held that the Amsler-Morton lehr infringed certain Hartford patents, and that the Supreme Court of the United States denied a petition for writ of *certiorari* in said case. Deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

124 and 125. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraphs of the complaint.

Alleged "1935 Hartford-Owens Agreements"

126. Upon information and belief admit that by agreement dated September 30, 1935, between Owens, Owens-Illinois Pacific Coast Company (an Owens subsidiary) and Hartford, Owens' right to one-third of Hartford's net income, as provided in the agreement referred to in paragraph 103 of the complaint, was terminated but deny knowledge or information sufficient to form a belief as to the details of said agreements.

127. Upon information and belief admit that Hartford and Owens entered into certain agreements referred to in said paragraph of the complaint but deny knowledge or information sufficient to form a belief as to the details of said agreements.

[fol. 408] Alleged "Hartford-Owens-Thatcher-Liberty Agreements Regarding Milk Bottles"

128 through 133. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraphs of the complaint.

134. Upon information and belief admit that Owens acquired the assets of Berney-Bond Glass Company, which had a Hartford license to manufacture milk bottles, the terms of which are unknown to these defendants.

135 and 136. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraphs of the complaint.

137. Upon information and belief admit that defendant Liberty Glass has a license from Hartford for the use of Hartford equipment in the manufacture of milk bottles, the terms of which are unknown to these defendants; that in or about 1934 Knape-Coleman Company began manufacturing and selling milk bottles in Texas in competition with Liberty Glass; that at or about said time Hartford notified Knape-Coleman that the equipment which it was using in the manufacture of milk bottles infringed certain of the Hartford patents, and that in or about 1935 Hartford instituted a patent infringement suit against Knape-Coleman, and that said suit was settled by agreement of the parties, the terms of which are unknown to these defendants. Deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

138. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint.

[fol. 409] 139. Upon information and belief admit that Florida Glass Manufacturing Company, Buck Glass Company, Universal Glass Products Company, and Lamb Glass Company are licensees of Hartford under licenses permitting the manufacture of milk bottles, and that under its license agreement with Hartford Florida Glass Manufacturing Company is limited to the manufacture of 27,500 gross milk bottles per annum, but deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

140 through 141. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraphs of the complaint.

142. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint as supplemented by paragraph 12 of Hartford's bill of particulars and paragraph 8 of Owens' bill of particulars, except as admitted or averred in the paragraphs of this answer correspondingly numbered to those numbered paragraphs of the complaint enumerated in said paragraphs 12 and 8 of said bills of particulars, respectively.

Alleged "Hartford, Owens, Hazel-Atlas-Ball Brothers Agreements"

143. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint.

144. Upon information and belief admit that for a number of years prior to 1912 defendant Ball Brothers or its predecessors manufactured domestic fruit jars, and that [fol. 410] in or about 1909 it acquired a license to use Owens suction machines for the manufacture thereof. Deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

145. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint.

146. Upon information and belief admit that at no time prior to March 25, 1933, did Ball Brothers have a license from Hartford-Empire to use machinery covered by patents owned by Hartford; that prior to March 25, 1933, it used automatic machinery for the manufacture of domestic fruit jars which Ball Brothers claimed did not infringe Hartford's patents. Deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

147. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint.

148. Upon information and belief admit that prior to 1933 the principal competitors of Ball Brothers in the manufacture of domestic fruit jars were Owens and Hazel-Atlas, each of whom was licensed under Hartford patents, but deny that General Glass Company, which was also licensed under Hartford patents, was ever a competitor of Ball Brothers in the manufacture of domestic fruit jars. Admit that Salem Glass Works had a Hartford license, but deny that such license was limited to the "Eureka" jar, and aver that said license expressly allowed Salem Glass Works to make "Lightning" fruit jars, and that said license [fol. 411] has now been assigned to and is now held by defendant Anchor Hocking. Upon information and belief

admit that on March 25, 1933, Gayner Glass Works had a Hartford license under which it was authorized to manufacture domestic fruit jars. Deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint. Further answering, aver that prior to March 25, 1933, and thereafter, Capstan Glass Company had and now has a license granting it the right to use both equipment covered by Tucker, Reeves and Beatty patent and Hartford Single Feeder patents for the manufacture of fruit jars for domestic use and has manufactured and now is manufacturing domestic fruit jars thereunder.

149 and 150. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint.

151. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint as supplemented by paragraph 7 of Ball Brothers' bill of particulars.

152 and 153. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraphs of the complaint.

154. Upon information and belief admit that under date of March 25, 1933, Hartford entered into an agreement with Ball Brothers, and that under this agreement Ball Brothers paid Hartford $400,000, but deny knowledge or information sufficient to form a belief as to whether under said agreement $100,000 of such $400,000 was to be paid by Hartford [fol. 412] for reacquiring from General Glass Company the Hartford license to it to manufacture domestic fruit jars, and aver that if said averment be true neither General Glass Company nor any of these answering defendants had any knowledge of any such arrangement. Admit that thereafter General Glass Company did agree with Hartford for a valuable consideration to the cancellation of the express provision in its license agreement with Hartford allowing it to manufacture thereunder fruit jars for domestic use, but aver that neither General Glass Company nor any of these answering defendants had any knowledge or information concerning the purpose for which Hartford desired the cancellation of such right.

155. Upon information and belief admit that under the March 25, 1933 agreement Hartford agreed not to grant any other license in the United States for the manufacture of fruit jars (for domestic use) as long as Ball Brothers paid the minimum royalty payments provided for under the agreement, and deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

156. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint.

157. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint.

158. Deny that Ball Brothers, Hazel-Atlas and Owens are the only Hartford licensees in the general fruit jar field since 1934, and aver that under the licenses granted by Hart-
[fol. 413] ford to Capstan Glass Company such licensee has the right to make all types and kinds of fruit jars for domestic use, and that Salem Glass Works and Anchor Hocking as its successor have and had the rights granted by the license described in paragraph 198 of this answer. Deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

159. Upon information and belief admit that prior to 1936, Ball Brothers asked Hartford to notify Three Rivers Glass Company of the exclusive license rights of Ball Brothers and to stop said company from manufacturing fruit jars for domestic use. Deny knowledge or information sufficent to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

160. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint.

161. Upon information and belief admit that since March 25, 1933, Hartford has granted no licenses under which the manufacture of domestic fruit jars is authorized, except the licenses to defendant Owens described in paragraph 127 of the complaint. Deny knowledge or information sufficient

to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

162 and 163. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraphs of the complaint.

164. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in [fol. 414] said paragraph of the complaint as supplemented by paragraphs 13 (a) and 13 (b) of Hartford's bill of particulars and paragraph 9 of Owens' bill of particulars, except as admitted or averred in the paragraphs of this answer correspondingly numbered to those numbered pargraphs of the complaint enumerated in said paragraphs 13 (a) and 13 (b) and 9 of said bills of particulars, respectively.

Alleged "Hartford, Owens and Anchor Hocking Relations"

165. Admit that for a number of years prior to 1931 and thereafter, there were a large number of competing manufacturers of a general line of glass containers. Upon information and belief admit that at some time or times prior to 1931 Illinois Glass Company owned stock in the defendants Hazel-Atlas and Thatcher, but deny knowledge or information sufficient to form a belief as to said time or times, or the amounts so owned, or as to whether or not the same constituted substantial blocks thereof. Deny that there now is or ever was at any time a group in the industry which either constitutes or were known as the "Levis Group." Deny that prior to 1931 any group known as or constituting the "Levis Group" through the Illinois Glass Company or otherwise, owned, or that the Illinois Glass Company owned any stock in Hocking Glass Company. Deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

166. Admit that prior to 1931 Hartford instituted in an Indiana state court, suit against Turner Glass Company, [fol. 415] a licensee of Hartford, for non-payment of royalties, and that in said proceedings said court appointed a receiver for Turner Glass Company, said company being insolvent. Admit that at that time defendant Isaac J. Collins was an officer, director and stockholder of Hocking

Glass Company and a stockholder and director of defendant Hartford, and further answering, aver that he was also a stockholder and director of said Turner Glass Company.

167. Admit that in 1931 Hocking Glass Company and defendant Thatcher organized General Glass Corporation, an Indiana corporation; that one-half of the stock of General Glass was issued to and owned by Hocking Glass Company, and the other half was issued to and owned by defendant Thatcher, but deny that defendants Owens and Hartford or either of them were in constant communication with respect thereto or with respect to the reorganization of Turner, and deny that defendant Owens through its officers brought together the bondholders of Turner and the financial interests in control of Hocking and defendant Thatcher, and deny that the organization of General Glass or the purchase of the assets of Turner or the plan of reorganization of Turner was ever submitted to or approved by the defendant Owens, and aver that as to the defendant Hartford the plan for the organization of General Glass was discussed with it only for the purpose of obtaining the agreement of Hartford that General Glass would receive licenses on Hartford equipment held by the receiver of Turner in the event such equipment should be purchased by General Glass. Admit that General Glass purchased at receiver's sale certain of the assets of Turner Glass Company, but deny that the reorganization of Turner effected [fol. 416] the elimination of an independent producer of glassware, and aver that thereafter General Glass engaged in the manufacture of a general line of glass containers. Deny that Anchor Hocking, its predecessors or subsidiaries, have ever been or are a party to a group through which the defendant Hartford governs the glass industry and deny that the organization of General Glass or its purchase of the assets of Turner Glass resulted in a company in any way dominated or controlled by the defendant Hartford or by anyone other than the stockholders thereof. Admit that in 1935 Thatcher sold its interest in General Glass to Hocking Glass Company, and aver that the sales price thereof was $750,000, and that said sale was made pursuant to a buy or sell agreement, and that Thatcher elected to sell rather than buy. Admit that General Glass Company was dissolved, but aver that said dissolution took place on December 4, 1937, at which time its assets were trans-

ferred to the Hocking Glass Company, which later transferred its assets to Anchor Hocking. Deny each and every averment contained in said paragraph of the complaint as supplemented by paragraphs IV (a) and IV (b) of Anchor Hocking's bill of particulars not herein expressly admitted to be true.

168. Admit that in 1931 (not in 1932 as averred) General Glass Company purchased certain assets of the Nivison-Weiskopf Company for $150,000, but deny that such purchase was made at the request of defendants Hartford and Owens or either of them, or that such purchase was made pursuant to an agreement between General Glass and Hartford that an infringement suit theretofore instituted by Hartford against Nivison-Weikopf Company would be set-
[fol. 417] tled and that Hartford would buy the Nivison-Weiskopf patents from General Glass, or pursuant to any other agreement between General Glass and Hartford of any kind whatsoever.

As to paragraph V of Anchor Hocking's bill of particulars supplementing paragraph 168 of the complaint:

a. Admit the existence of an agreement dated September 16, 1932, and a stipulation dated November 23, 1932, both between General Glass Company and defendant Hartford, such stipulation being filed in the United States District Court of Ohio in the case of *Hartford-Empire vs. The Nivison-Weiskopf Company*, but deny that such agreement and stipulation or either of them evidence in whole or in part the alleged agreement averred in paragraph 168 of the complaint.

b. Deny each and every averment contained therein.

c. Admit that the agreement of September 16, 1932, and the stipulation of November 23, 1932, referred to in subparagraph a of paragraph IV of said bill of particulars were executed by defendant F. Goodwin Smith as president of defendant Hartford and defendant Isaac J. Collins as president of General Glass, but deny each and every other averment contained in said paragraph of said bill of particulars.

169. Admit that on December 31, 1937, Anchor Cap Corporation, whose glass container manufacturing subsidiaries

were Hartford licensees, acquired substantially all the assets of Hocking Glass Company, another Hartford licensee, and on the same date changed its name to Anchor Hocking Glass Corporation, but deny that Hartford or Owens induced or had any connection with such transaction or that it was in furtherance of any conspiracy, monopoly, or com- [fol. 418] bination in restraint of trade. Deny that any group known as or constituting the "Levis Group" aided or financed such merger. Admit upon information and belief that defendant Anchor Hocking as a result of such transaction became the third largest manufacturer of glass containers in the United States, but deny that it has at any time joined or been a party to any conspiracy, monopoly, or combination in restraint of trade, as averred in said paragraph of the complaint and in paragraph VI (c) of Anchor Hocking's bill of particulars, by acting upon the council and encouragement of the other alleged conspirators herein or otherwise, by accepting financial or other assistance from the "Levis Group" or otherwise, or by agreeing to continue under the license agreement between defendant Anchor Hocking and defendant Hartford with its restrictions, limitations and exclusions, or otherwise, and deny that it or any of these answering defendants participated in or encouraged any of the acts and practices set forth in said complaint except as and to the extent admitted and averred in the paragraphs of this answer correspondingly numbered to those numbered paragraphs of the complaint enumerated in subparagraph b of paragraph VI of said bill of particulars, and particularly deny that any of the acts or practices by which they are claimed to have joined the alleged conspiracy, monopoly, and combination in restraint of trade constitute joining, becoming a member of, or participating in the same.

As to paragraph VI of Anchor Hocking's bill of particulars supplementing paragraph 169 of the complaint:

Deny each and every averment contained in subparagraph a.

[fol. 419] Deny each and every averment contained in subparagraph b except as the same may be admitted or averred in paragraphs of this answer correspondingly numbered with the paragraphs of the complaint enumerated in said subparagraph of said bill of particulars.

Alleged "The Glass Container Association: Production Quotas and Maintenance of Prices"

170. Upon information and belief admit that the defendant Glass Container Association was organized in 1919 as a trade association for the glass container industry to promote the manufacture, sale and use of glass containers and allied articles, and, among other purposes, to compile technical information, to publicize the industry, to aid in the improvement and quality of glass, and to encourage uniformity of legislation and government regulations affecting the glass industry; that during all or a part of the period from 1920 to 1928 one I. J. Jennings was employed by the Association; that since in or about March, 1928, the defendant Charles R. Stevenson has been and now is business manager of said defendant Glass Container Association, and that since in or about October, 1929, the defendant Emory G. Ackerman has been employed by said defendant Glass Container Association as acting assistant business manager or assistant business manager. Deny each and every averment contained in said paragraph of the complaint not herein expressly admitted to be true.

171. Admit that defendants Owens, Hazel-Atlas, Thatcher, Ball Brothers, Liberty Glass and Anchor Hocking have each been for some time and now are members and actively interested in the work of the Association, and deny [fol. 420] knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

172. Upon information and belief admit that since prior to 1928 the Association's activities have included the collection and dissemination of statistical data and the issuance of advertising matter regarding the use of glass containers and deny each of the remaining averments contained in said paragraph of the complaint.

173. Deny that Anchor Hocking or any of these answering defendants have in any way, in concert with others or otherwise, fixed, maintained or enforced arbitrary, artificial, or non-competitive prices for various types of glass containers, by the means and methods averred in paragraph 173 of the complaint, or by any other means or methods, and deny each and every averment contained in said paragraph of the complaint.

174. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint.

175. Deny each and every averment contained in said paragraph of the complaint.

176 through 178. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraphs of the complaint.

179. Deny that the prices in the glass container industry are non-competitive or otherwise artificially high.

180. Deny that Anchor Hocking or any of these answering defendants have ever been a party to or observed, maintained or enforced any agreement with respect to a system of price leadership in the glass container industry. Upon information and belief deny that a system of price leader- [fol. 421] ship in the glass container industry has been established by agreement, or maintained or enforced by any concerted action therein. Upon information and belief admit that the defendant Corning is the largest manufacturer in the industry of heat resisting ware, that the defendant Owens is the largest manufacturer in the industry of narrow mouthed glassware, that the defendant Hazel-Atlas is the largest manufacturer in the industry of wide mouthed glassware (principally packers' ware), that the defendant Thatcher is the largest manufacturer in the industry of milk bottles, and that the defendant Ball Brothers is the largest manufacturer in the industry of fruit jars; and that the list prices of said companies for the particular ware of which they are respectively the largest manufacturers have been and are generally followed from time to time by the smaller manufacturers acting independently in fixing their own list prices for similar ware, but upon information and belief aver that said list prices for all types of ware sold by the defendant Anchor Hocking have been consistently lowered during the past fifteen years as a result of operating economies and competition between the various companies engaged in the manufacture and sale of such kinds of ware, and the actual prices at which glass containers have been and are sold, were and are in many cases lower than the list prices of the various companies for the various types of ware, and in so far as the actual prices charged by Anchor Hocking are concerned for the types of ware

manufactured and sold by it, such prices are and at all times have been fair and reasonable. Deny each and every averment contained in said paragraph of the complaint not herein expressly admitted to be true.

[fol. 422] As to paragraph 14 of Hartford's bill of particulars supplementing paragraph 180 of the complaint, deny each and every averment contained in each of the subparagraphs thereof in so far as they refer or purport to relate to defendant Anchor Hocking Glass Corporation, its predecessors or subsidiaries or any of these answering defendants, and deny knowledge or information sufficient to form a belief as to the truth of the averments contained in said paragraph of said bill of particulars in so far as they affect or purport to relate to the other defendants.

Alleged "Espionage and Similar Tactics by Hartford, Owens, and Corning"

181. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraphs of the complaint as supplemented by paragraphs III(1) (a) through (g) of Corning's bill of particulars, except as admitted or averred in paragraphs of this answer correspondingly numbered with the paragraphs of the complaint enumerated in said subparagraphs of said bill of particulars.

182 through 187. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraphs of the complaint.

Alleged "Volume of Business and Profits"

188. Deny that Anchor Hocking has ever made excessive profits, or that the prices charged or received by it for the various types of glass containers manufactured by it have been or are artificially high, uniform and noncompetitive. Deny knowledge or information sufficient to form a belief [fol. 423] as to the truth of any of the remaining averments contained in said paragraph of the complaint, except admit that the profits of Hazel-Atlas have been and are unduly large as compared with the profits of Anchor Hocking by reason of the large sums received by it under the provisions of its agreement with Hartford of July 1, 1932, described in paragraph 101 of this answer.

189. Upon information and belief admit that in 1937 the gross sales of glass containers and of pressed and blown glassware were substantially as set forth in said paragraph of the complaint.

190 through 192. Upon information and belief admit that Hartford, Corning, and Owens have each had substantial earnings in some years but deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraphs of the complaint.

193. Upon information and belief admit the averments contained in said paragraph of the complaint.

194 through 196. Upon information and belief admit that Thatcher, Lynch, and Ball Brothers have each had substantial earnings in some years, but deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraphs of the complaint.

197. Admit that Anchor Hocking has for a number of years had substantial earnings, and that the consolidated sales and consolidated net profits respectively for the year 1937 of Anchor Hocking, its subsidiaries, and the companies whose assets it acquired at the end of 1937 were as averred in said paragraph of the complaint, and aver that the [fol. 424] amount of such net profits were not excessive.

198. Upon information and belief admit that Liberty-Glass has had substantial earnings in some years, but deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

Alleged "Restrictions on Machinery and Restrictions on Use and Production of Glass Containers"

199. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint, but upon information and belief aver that it is and has been the general policy of Hartford not to sell any of its glass container machines, but to lease the same under licensing agreements in consideration of an initial license fee and royalties on production.

Alleged "Restrictions on Machines"

200. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint.

201. Admit that the license agreements between Hartford and Anchor Hocking, or its subsidiaries, provide that improvements made by the licensee on the licensed machinery shall become the property of Hartford without any compensation to the licensee, and deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

[fol. 425] 202. Admit that the license agreements between Hartford and Anchor Hocking or its subsidiaries contain a provision whereby the licensees agree not to contest the validity of the patents under which it is licensed, including certain patents issued subsequent to the date of the license, but deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

203. Deny that license agreements between Hartford and Anchor Hocking or its subsidiaries limit the use of Hartford feeders by the licensee to use in connection with Hartford forming machines, and the use of Hartford lehrs to use in connection with other Hartford machines, and deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

204. Deny that Hartford has prevented or is now preventing the defendant Anchor Hocking Glass Corporation or any of its subsidiaries or predecessors, directly or indirectly, from expanding their business into various parts of the United States, by restricting the number of feeding machines available to such licensees, but deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint as supplemented by paragraph 15 of Hartford's bill of particulars.

Alleged "Restrictions on Use and Production of Glass Containers"

205. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint as supplemented by paragraph 10 of Owens' bill of particulars and paragraph 16 (a) [fol. 426] of Hartford's bill of particulars, except deny that any agreement between the defendant Anchor Hocking, its predecessors or subsidiaries, and the defendant Owens and the defendant Hartford, or either of them, is a part of any policy formulated by defendants Hartford and Owens to which these answering defendants are a party or in which they have a part, formulated and carried out with a view to and the effect of which is the carrying out or furthering of any conspiracy, monopoly, or combination in restraint of trade in so far as said defendant Anchor Hocking, its predecessors or subsidiaries, and these other answering defendants are concerned.

206. Upon information and belief admit that Hartford through its agreements with its licensees regulates the manufacture of glass products by its licensees upon Hartford equipment, which glass products are not themselves the subject of the patents covered by the license agreements. Deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint as supplemented by paragraph 16 (b) of Hartford's bill of particulars and paragraph 11 of Owens' bill of particulars, except as the same may be admitted or averred in paragraphs of this answer correspondingly numbered with the paragraphs of the complaint enumerated in said paragraphs of said bills of particulars.

207. Upon information and belief admit that no one licensee of Hartford has been licensed by Hartford to use Hartford equipment in the manufacture of all types of glassware, and that all of Hartford's feeder and former licenses with the exception of its license to the defendant Corning [fol. 427] contain a purported restriction against the use of the machinery licensed in the manufacture of bulbs and heat resisting ware. Deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

208 and 209. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraphs of the complaint.

210. Upon information and belief admit that Hartford has inserted in various of its license agreements clauses restricting (1) the type or kind of glassware which can be produced; (2) the uses of the product manufactured; (3) the character of the glassware as to (a) weight, (b) color, (c) capacity and (d) composition; (4) the quantity which can be produced; and (5) the customer or class of customers to whom the products may be sold; but deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

211. Admit that the license agreements between Hartford and Anchor Hocking and its subsidiaries purport to limit the type or kind of glassware that may be manufactured thereunder, and purport to authorize the use of the licensed machinery in the production of certain types or kinds of glass containers only, and purport specifically to exclude Anchor Hocking and its subsidiaries from using such machinery for certain other types and kinds of glassware, and upon information and belief admit that the same is generally true as to the other licensees of Hartford. Deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in [fol. 428] said paragraph of the complaint.

212. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint.

213. Admit that Hartford's license agreement of January 27, 1937, with Salem Glass Works purported to exclude the manufacture thereunder by Salem of glass containers exceeding 72 ounces in weight; and that Hartford's license agreement of December, 1935, with Hocking Glass Company purported to exclude the manufacture thereunder by Hocking Glass of any articles exceeding 82 ounces in weight, but aver that said agreement was amended by letter agreement dated May 26, 1937, whereby said maximum weight was increased to 128 ounces. Admit that Hartford's license agreement of February 17, 1926, with Capstan Glass Company (as amended October 12, 1933) purports to exclude the

manufacture thereunder of glass containers exceeding 100 ounces in weight, and deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

214. Admit that Hartford's license agreement with Capstan Glass Company purports to limit Capstan in the manufacture of liquor bottles, flasks and wine bottles to 150,000 gross per annum, and that Hartford's license agreement of January 27, 1937, with Salem Glass Works purports to limit Salem in the manufacture of candy jars to 50,000 gross per annum. Deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

215. Deny knowledge or information sufficient to form a [fol. 429] belief as to the truth of any of the averments contained in said paragraph of the complaint.

216. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint.

Alleged "Refusals to License"

217. Deny that the defendant Anchor Hocking in any manner, by any means, or to any extent monopolizes or dominates the glassware industry or any part thereof, in concert with others or otherwise, or that any of its acts or activities, in concert with others or otherwise, have directly or indirectly resulted in or tended to the suppression or prevention of substantial competition in the production and sale in interstate commerce of glassware machinery or glassware products manufactured therefrom, and deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint except as and to the extent the same are admitted or averred herein.

218. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint.

Alleged "Extent of Monopoly"

219. Upon information and belief admit that the defendants Hartford and Owens each own a large number of

patents on glass making machinery, the exact number of which is not known to these answering defendants. Upon information and belief admit that the figures set forth in said paragraph of the complaint with respect to the produc- [fol. 430] tion of glass containers upon equipment owned or licensed by Hartford or Owens and upon equipment not licensed by Hartford or Owens, and the figures with respect to the percentage of glass making machinery owned or licensed by Hartford and Owens, respectively, are substantially correct. Deny knowledge or information sufficient to form a belief as to the truth of any of the remaining averments contained in said paragraph of the complaint.

220 through 224. The complaint has no paragraphs numbered 220 through 224.

225. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint, and aver upon information and belief that the defendant Lynch Corporation manufactures and sells a substantial amount of glass forming machinery for others than Hartford and Owens.

226. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint, and upon information and belief aver that defendant Corning has a dominant position in the manufacture and distribution of machine made heat resisting ware.

227. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint, except admit that Owens, Hazel-Atlas, Anchor Hocking, Thatcher, and Ball Brothers are Hartford licensees, and that during the year 1937 Anchor Hocking, its subsidiaries and predecessor companies manufactured and distributed approximately 8.01% of all glass containers produced in the United States (including milk bottles and fruit jars), and that two non-licensed com- [fol. 431] panies are being sued by Hartford.

228 and 229. Deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraphs of the complaint.

Conclusion

230. Deny that the defendant Anchor Hocking or any of these answering defendants are or have ever been a party to a conspiracy, monopoly and combination in restraint of trade as alleged in said complaint or otherwise, or have had any part in establishing or maintaining the same, and deny that by the various acts in said complaint alleged or otherwise they have done those things or any of them, in concert with others or otherwise, averred in said paragraph of the complaint and deny knowledge or information sufficient to form a belief as to the truth of any of the averments contained in said paragraph of the complaint in so far as they relate to or affect any of the other defendants herein.

Further answering, defendants aver:

1. That Anchor Hocking Glass Corporation, its glass manufacturing predecessors and subsidiaries (hereinafter collectively referred to as "Anchor Hocking") now are, and at all times, have been engaged in the manufacture of glassware upon machinery and equipment covered by patents owned by others.

2. That Anchor Hocking never has engaged to any material extent in acquiring patents or in licensing others under patents and has never engaged in the manufacture, licensing or distribution of glass making machinery.

3. That by reason of the foregoing and because of the [fol. 432] existence at all times of the numerous patents and patent applications covering all types of glassmaking machinery and equipment, in order to engage in said business and to meet the competition therein, it has been necessary for Anchor Hocking to secure its machinery and equipment and the necessary licenses to use the same from the owners of said machinery and equipment and the patents covering the same.

4. That the machinery and equipment manufactured under patents owned by the defendant Hartford was, and is believed to be the most suitable and economical for use by Anchor Hocking in its manufacturing operations, and, therefore, it was necessary for it to, and it has negotiated various licenses and leases from Hartford under which it

has been enabled to and has obtained Hartford machinery and equipment for use in its manufacturing operations.

5. That the terms and provisions of its various leases and licenses from Hartford have been arrived at by negotiation between it and Hartford, but such terms and provisions have been in all cases necessarily fixed finally by Hartford as the owner of the patents and equipment covered thereby, although Anchor Hocking has at all times attempted to secure leases and licenses permitting unrestricted use by it of the machinery and equipment covered thereby.

6. That under its licenses with Hartford, Anchor Hocking has paid to Hartford large amounts as royalties and license fees, aggregating in excess of $800,000.00 in 1939, and that it has never in any way participated in any division of Hartford's income.

7. That as a manufacturer of glassware, Anchor Hocking has at all times been engaged in free and open competi- [fol. 433] tion with other manufacturers in the industry producing similar lines of ware.

8. That as a manufacturing licensee upon machinery and equipment covered by patents held and owned by others in which Anchor Hocking had no interest, other than under its leases and licenses, it could not and has not engaged in any of the various acts of alleged patent domination or control or any of the other alleged wrongful acts averred in the complaint to have constituted or resulted in a monopoly, combination or conspiracy in restraint of interstate trade and commerce, but on the contrary, such restrictions as have existed or now exist in respect to its business have resulted from conditions beyond its control.

Wherefore, these answering defendants severally pray that the complaint be dismissed as to them without costs to these defendants.

Hugh C. Laughlin; Welles, Kelsey, Cobourn & Harrington; Corbett & Mahoney, Attorneys for the Within Named Defendants.

Of Counsel: George D. Welles, Fred E. Fuller, Leslie Henry.

[fol. 434] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF CORNING GLASS WORKS ET AL.—Filed March 15, 1940

The defendants Corning Glass Works, Eugene C. Sullivan, William H. Curtiss, George D. Macbeth, Glen W. Cole, P. W. Jenkins, J. L. Peden, W. C. Decker, Arthur L. Day and George B. Hollister, answering plaintiff's complaint herein:

1. Admit the allegations of paragraph 1 thereof, except they deny that any of them have violated or intend to violate Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act and deny that they have any knowledge or information as to any of the allegations that the other defendants herein have violated or intend to violate Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act, sufficient to form a belief as to the truth thereof.

2. Admit that certain of the defendants conduct their business and are found within the Western Division of the Northern District of Ohio, and that interstate trade and commerce involved in the glass industry are carried on in part within such District and Division. Deny any unlawful acts and violations described in said complaint on the part of the answering defendants, and deny that they have any knowledge or information as to any acts and violations described in paragraph 2 in the complaint as committed by the other defendants, sufficient to form a belief as to the truth thereof.

[fol. 435] 3. Deny each and every of the following allegations of paragraph 3: that said defendant Hartford does not commercially manufacture glass making machinery; that said defendant is simply a patent holding company as it is primarily a research and engineering company. Admit that said defendant owns patents and admit the allegations of said paragraph not hereinbefore denied.

4. Admit the allegations of paragraph 4.

5. Deny each and every of the following allegations of paragraph 5: that Empire is a patent holding company for

the defendant Corning. Admit the allegations of said paragraph not hereinbefore denied.

6. Deny each and every of the following allegations of paragraph 6: that Alanson B. Houghton and Arthur A. Houghton, Jr. have been and now are officers of Empire; that Alanson B. Houghton now is a director of Empire; that Alanson B. Houghton, Amory Houghton and Arthur A. Houghton, Jr. have been or now are officers of Hartford; that Houghton Associates, Inc. is organized and doing business in the State of New York. Admit the allegations of said paragraph not hereinbefore denied.

7. Admit that the defendant Owens-Illinois Glass Company is a corporation with its principal office at Toledo, Ohio. Deny that they have any knowledge or information as to any of the allegations in paragraph 7 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

8. Admit that the Hazel-Atlas Glass Company is a corporation with its principal office at Wheeling, West Virginia. Deny that they have any knowledge or information as to any of the allegations in paragraph 8 contained not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

9. Admit that the defendant Thatcher Manufacturing Company is a corporation with its principal office at Elmira, New York. Deny that they have any knowledge or informa-[fol. 436] tion as to any of the allegations in paragraph 9 contained not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

10. Admit that the defendant Lynch Corporation is a corporation with its principal office at Anderson, Indiana. Deny that they have any knowledge or information as to any of the allegations in paragraph 10 thereof not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

11. Admit that the defendant Anchor Hocking Glass Corporation is a corporation with its principal office at Lancaster, Ohio. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 11 thereof not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

12. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 12 sufficient to form a belief as to the truth thereof.

13. Admit that Liberty Glass Company is a corporation with its principal office at Sapulpa, Oklahoma. Deny that they have any knowledge or information as to any of the other allegations in paragraph 13 thereof sufficient to form a belief as to the truth thereof.

14. Admit that the defendant Ball Brothers Company is a corporation with its principal office at Muncie, Indiana. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 14 thereof, except as hereinbefore admitted, sufficient to form a belief as to the truth thereof.

15. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 15 sufficient to form a belief as to the truth thereof.

16. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 16 sufficient to form a belief as to the truth thereof.

17. Admit that the defendants F. Goodwin Smith, Bartlett Arkell, Alexander D. Falck, Robson D. Brown, John C. [fol. 437] Hostetter, Roger M. Eldred, Karl E. Peiler, Arthur T. Safford, Jr., Theodore L. Champeau, William H. Honiss, A. M. Pease, Amory Houghton, Arthur A. Houghton, Jr., and Alanson B. Houghton have been for various times and are officers or directors of the defendant Hartford. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 17 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

18. Admit that the individual defendants Alexander D. Falck, Eugene C. Sullivan, Amory Houghton, Arthur A. Houghton, Jr., William H. Curtiss, George D. Macbeth, Glen W. Cole, P. W. Jenkins, J. L. Peden, W. C. Decker, Alanson B. Houghton, John L. Thomas, George B. Hollister and Arthur L. Day have been officers or directors of the defendant Corning and that all but George B. Hollister, Arthur L. Day, W. C. Decker and John L. Thomas are officers or directors of such defendant; that each of said individual defendants has participated in the direction and

management of the defendant Corning and the present officers and directors participate in such direction and management but only to the extent of performing various official acts within his authority as such officer and/or director since he individually became an officer or director of said defendant Corning; that said individual defendants, or some of them, as officers and/or directors of defendant Corning but not otherwise have approved, authorized, ordered and done some but not all of the acts alleged in the complaint to have been performed by defendant Corning as admitted in this answer. Deny that any of the individual defendants mentioned in paragraph 18 have approved, authorized, ordered or done or participated in any act in violation of Sections 1 and 2 of the Sherman Act or Section 3 of the Clayton Act, and deny each and every allegation in paragraph 18 alleged not hereinbefore admitted or denied.

19. Admit that the individual defendants Alexander D. Falck, Alanson B. Houghton, Amory Houghton, Arthur L. [fol. 438] Day and Arthur A. Houghton, Jr. have been and that Alexander D. Falck, Amory Houghton and Arthur A. Houghton, Jr. are officers or directors of the defendant Empire. Deny that Alanson B. Houghton and Arthur L. Day are now directors or officers of the defendant Empire. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 19 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

20. Admit that William E. Levis and certain other of the individual defendants mentioned in paragraph 20 are officers or directors of the defendant Owens. Deny that they have any knowledge or information of any of the allegations in said paragraph 20 contained not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

21. Admit that J. Harrison McNash and certain other of the individual defendants mentioned in paragraph 21 thereof are officers or directors of the defendant Hazel-Atlas. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 21 thereof not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

22. Admit that H. C. Mandeville and certain other of the individual defendants mentioned in paragraph 22 thereof

are officers or directors of the defendant Thatcher. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 22 thereof not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

23. Admit that Thomas Chandler Werbe and certain other of the individual defendants mentioned in paragraph 23 are officers and directors of Lynch. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 23 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

24. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 24 suffi- [fol. 439] cient to form a belief as to the truth thereof.

25. Admit that the defendant Isaac J. Collins and certain of the individual defendants mentioned in paragraph 25 of said complaint are officers or directors of the defendant Anchor Hocking. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 25 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

26. Admit that the defendant Frank Clayton Ball and some of the other individual defendants mentioned in paragraph 26 are officers or directors of the defendant Ball Brothers. Deny that they have any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph 26 thereof not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

27. Deny that the defendant Empire Machine Company is engaged in trade and commerce between and among the several States of the United States. Admit that the corporate defendants other than Empire, Glass Container Association of America, Inc. and the Stevenson Corporation are engaged in trade and commerce between and among the several States of the United States. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 27 of said complaint not hereinbefore admitted or denied, sufficient to form a belief as to the truth thereof.

28. Admit that the glass machinery and various kinds of glassware referred to in said complaint are manufactured

in various localities and part thereof is shipped and distributed through channels of interstate trade and commerce. Deny each and every allegation of paragraph 28 not hereinbefore admitted.

29. Deny that the glassware industry may be divided into two divisions—glass container and pressed and blown glassware as alleged in paragraph 29 because containers are pressed or blown or pressed and blown, and electric light bulbs are generally produced by merely blowing; some table- [fol. 440] ware is produced by pressing and blowing, some by pressing alone and some by blowing alone; that heat resistant ware is produced in any of the three ways last named; that lamp chimneys and scientific or laboratory ware are generally produced by blowing; that signal and optical ware and automobile glassware are generally produced by pressing. Admit that packers ware, pharmaceutical, prescription and toilet ware, liquor and beer bottles, fruit jars, jelly glasses, milk bottles and the like are known to the trade as glass containers. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 29 not hereinbefore admitted or denied sufficient to form a belief as to the truth thereof.

30. Admit that prior to 1905 glassware was made principally by hand or by semiautomatic machinery in the United States. Deny that no manufacturer could commercially engage in the business of producing glassware unless automatic machinery was used. Deny that they have any knowledge or information as to any of the allegations of paragraph 30 not hereinbefore admitted or denied sufficient to form a belief as to the truth thereof.

31. Admit that prior to 1906 the predecessor of defendant Corning was engaged in the manufacture of electric light bulbs and specialty glassware such as signal and optical ware and had the following patents: (1) On process of and apparatus for vertical tube drawing; (2) Apparatus and method for pressing clinical thermometer tubing blanks; (3) Method of pressing blanks for lantern globes; (4) Lantern globe as an article; (5) Mold for manufacturing lantern globes; (6) Lens. Deny each and every allegation in paragraph 31 contained not hereinbefore admitted.

32. Admit that prior to 1916 Hartford-Fairmont, the predecessor of Hartford, developed inventions, which were

the basis of patents, for an automatic gob-feeding machine to produce glass containers and other glassware. Deny that they have any knowledge or information as to any of the [fol. 441] allegations in paragraph 32 contained not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

33. Admit that since 1916 one of the commercial methods for manufacturing glass containers and some blown glassware has been as follows: Sand, soda-ash, limestone and cullett (broken glass) are mixed and then fed into the hottest portion of a furnace or tank; that the melted mixture or batch then flows slowly into cooler sections of the furnace from which it is fed into the glass container making machines; that some glass container making machines are fed by suction and others are fed by what is sometimes called "gob-feeding"; that in one of the "gob-feeding" processes the molten glass is fed through an orifice by a mechanism which causes the glass to be extruded in gobs or separate drops with shapes roughly approximating those of the molds in which they drop when cut off by a pair of shears near the orifice; admit that in one suction process the molten glass is sucked into receptacles which revolve around a center pillar and each of which in turn dips into the molten glass and sucks up its charge; that after each mold rises a knife cuts the glass in the mold from the body of molten glass; that in one "gob-feeding" process the molds into which the molten glass is poured are parts of a separate machine known as a former; that there are several types of forming machines manufactured and sold by independent companies; that after the glassware leaves the forming machine it is annealed to prevent the ware from cracking or breaking when subject to rapid changes in temperature; that the annealing process is sometimes but not always carried by a conveyor into a lehr or oven where it is stacked on a belt which moves slowly through an annealing chamber. Deny that they have any knowledge or information as to any of the following allegations of paragraph 33: That there have been little or no instance of litigation with respect to tanks or furnaces used by different companies engaged in the manufacture of glassware, sufficient to form a [fol. 442] belief as to the truth thereof. Deny each and every allegation in paragraph 33 not hereinbefore admitted or controverted.

34. Deny each and every allegation contained in paragraph 34.

35. Deny each and every allegation contained in paragraph 35.

36. Deny each and every allegation contained in paragraph 36.

37. Deny each and every allegation contained in paragraph 37.

38. Deny each and every allegation contained in paragraph 38.

39. Admit that in 1916 the Commissioner of Patents declared interference between claims of applications belonging to Empire and claims of applications belonging to Hartford-Fairmont Company. Deny each and every allegation in paragraph 39 contained not hereinbefore admitted.

40. Admit that negotiations were had after the Commissioner of Patents had declared interference in 1916, as admitted in paragraph 39, and prior to June 30, 1916 between Hartford-Fairmont and Empire. Deny each and every allegation contained in paragraph 40 of said complaint not hereinbefore admitted.

41. Admit that under date of June 30, 1916 Hartford-Fairmont and defendant Empire entered into an agreement by which Hartford-Fairmont granted Empire Machine an exclusive license to use the so-called Paddle Feeder, which was covered by a patent application of Hartford for the production of:

(a) Parts of electric lamps and ray tubes, other illuminating and light diffusing glassware to be used in connection with artificial illumination not being included in this subdivision.

(b) Signal and optical glassware.

(c) Glassware intended and adapted for heat resisting, chemical resisting and low expansion purposes, made from [fol. 443] glass containing one per cent (1%) or more of boric oxide.

(d) Glassware intended and adapted for holding food in process of cooking.

(e) Mold-blown articles of glass insofar as the same are or may be used for electrical purposes or in connection with electric illumination.

and to use the apparatus and methods described in its own applications (Chamberlin) free from any claims of Hartford's in said fields, and Empire Machine granted to Hartford the exclusive license to use the apparatus and methods described in its own applications free from any claims of Empire for the production of:

(a) Pressed glassware, except illuminating and light diffusing glassware to be used in connection with artificial illumination.

(b) Wide and semi-wide mouth ware not blown in paste molds, except illuminating and light diffusing glassware to be used in connection with artificial illumination.

(c) Narrow-neck ware not blown in paste molds and weighing more than seven ounces.

(d) Narrow-neck ware weighing seven ounces (7 oz.) or less, not blown in paste molds and intended and adapted as containers for beverages or food products. Deny each and every allegation in paragraph 41 contained not hereinbefore admitted.

42. Admit that under date of October 6, 1922 Hartford-Fairmont and defendant Empire Machine and the individual defendants Alanson B. Houghton, Alexander D. Falck, Bartlett Arkell, William H. Honiss, J. Dale Dilworth, F. Goodwin Smith and Arthur L. Day and all the other stockholders of Hartford-Fairmont and Empire Machine entered into an agreement known as the "Agreement for Formation of Hartford-Empire Company." Under this agreement defendant Hartford was organized and had transferred to it all of the stock of Hartford-Fairmont and certain of the assets of Empire Machine including all of Empire Machine's patents and inventions. That Hartford [fol. 444] issued to Empire Machine forty-five per cent (45%) of its common stock, and Empire Machine agreed to turn back ten per cent (10%) of said stock to Hartford for sale to its employees or to anyone upon unanimous vote of the Hartford's Board of Directors. That the balance of the issued common stock of Hartford and the greater part of an issue of preferred stock was issued to the former stock-

holders of Hartford-Fairmont. For the exact terms of said agreement reference is made thereto, a copy of which is in possession of the plaintiff. Deny each and every allegation of paragraph 42 not hereinbefore admitted.

43. Admit the following allegations of paragraph 43: that on the same day and under date of October 6, 1922, the defendants Hartford, Corning, and Empire Machine, with Hartford-Fairmont entered into an "Agreement Relating to Patent Rights and Formulas"; that it was an express condition of the Formation Agreement referred to in paragraph 42 hereof, that the Agreement Relating to Patent Rights and Formulas be entered into between defendants Hartford, Corning, and Empire Machine Co., and Hartford-Fairmont. Deny that said instrument was actually signed by all of the parties thereto on October 6, 1922.

44. Admit that the glassware field that was specified in the June 30, 1916 agreement referred to in paragraph 41 was extended and more fully defined under the agreement referred to in paragraph 43; that Corning therein reserved a "shopright" to use its patents in which it gave rights to Hartford. Deny each and every allegation of paragraph 44 not hereinbefore admitted.

45. Admit that Hartford and its predecessor, Hartford-Fairmont, for a number of years last past have issued licenses to a number of glassware manufacturers for the production of different types of glassware and particularly pressed and blown glassware other than heat resistant glassware as defined in the agreement of October 6, 1922, referred to in paragraph 43 of the complaint. Deny each [fol. 445] and every allegation in paragraph 45 not hereinbefore admitted.

46. Admit that subsequent to 1922 and between 1929 and 1931, in connection with a proposed revision of the agreement relating to patent rights and formulas, dated October 6, 1922, between defendants Hartford, Corning and Empire Machine Company and Hartford-Fairmont, mentioned in paragraph 43 of the complaint, which revision has never been carried out, Corning asked Hartford that the proposed revised contract give to Corning a right under Hartford inventions to manufacture containers from ordinary glass, and that there was a disagreement among the officers of Hartford as to whether or not to so revise the contract, and

that Corning has refrained and now refrains from using Hartford machinery in such field. Deny each and every allegation in paragraph 46 contained not hereinbefore admitted.

47. Admit the allegations contained in paragraph 47.

48. Admit that Corning granted to Fry Glass Company a limited license to make heat resistant ware in 1920 and a limited license to McKee Glass Company in 1921; that Corning refused to grant licenses under its patents for heat resisting ware to certain manufacturers prior to the expiration of such patents; that by the agreement of 1922 Hartford granted to Corning the exclusive license to use its machines on heat resistant ware as defined in said contract. Deny each and every allegation in paragraph 48 contained not hereinbefore admitted.

49. Admit that Hartford had divested itself by the 1922 agreement of the right to issue licenses to McKee Glass Company and to Macbeth-Evans Company so as to permit each of them to manufacture certain types of heat resisting ware on machinery covered by patents of Hartford. Allege that Corning has offered to McKee Glass Company and Macbeth-Evans Company such sub-licenses to manufacture certain articles, which offer each company refused. Deny [fol. 446] each and every allegation of paragraph 49 not hereinbefore admitted.

50. Admit that in 1937 Hartford refused to license Indiana Glass Company to manufacture heat resisting ware on machinery covered by patents of defendant Hartford and stated that such refusal was based on the fact that it had granted exclusive rights to use its feeding and forming machines for such purpose to Corning; that the Sullivan-Taylor patents belonging to Corning covering the composition of heat resisting ware had expired. Deny each and every allegation in paragraph 50 contained not hereinbefore admitted.

51. Admit that the Hocking Glass Company considered engaging in the manufacture of heat resisting ware; that Corning had exclusive rights to use Hartford's machines for producing the heat resisting ware defined in the contract of 1922. Deny that they have any knowledge or information as to any of the following allegations in paragraph 51; that

at no time since then has it (Anchor Hocking) engaged in such business; that Anchor Hocking made preparations to engage in the manufacture of heat resisting ware, sufficient to form a belief as to the truth thereof. Deny each and every allegation in paragraph 51 not hereinbefore admitted or controverted.

52. Deny each and every allegation in paragraph 52 of said complaint.

53. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 53 sufficient to form a belief as to the truth thereof.

54. Admit that in 1915 Hartford-Fairmont put on the market a glass feeder machine and thereafter licensed various glass manufacturers. Deny that they have any knowledge or information as to any of the other allegations in paragraph 54 sufficient to form a belief as to the truth thereof.

[fol. 447] 55. Deny that they have any knowledge or information as to any of the allegations contained in the following paragraphs except so far as have been hereinbefore admitted or denied, sufficient to form a belief as to the truth thereof: 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178 and 179.

56. Deny each and every of the following allegations of paragraph 180 thereof: Pursuant to this arrangement the defendant Corning is the recognized price leader in the industry for heat resistant glassware. Deny that they have any knowledge or information as to any of the allegations in said paragraph contained not hereinbefore denied sufficient to form a belief as to the truth thereof.

57. Deny each and every of the allegations contained in paragraph 181 as far as they apply to Corning. Deny that they have any knowledge or information as to any of the

allegations contained in paragraph 181 not hereinbefore denied, sufficient to form a belief as to the truth thereof.

58. Admit that Hartford's license agreements with Corning gave Hartford the right to enter the licensee's premises in order to examine and inspect the licensee's licensed machinery and equipment. Deny that they have any knowledge or information as to any of the allegations in paragraph 182 contained not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

59. Deny that they have any knowledge or information as to any of the allegations contained in paragraphs 183, [fol. 448] 184, 185 and 186 sufficient to form a belief as to the truth thereof.

60. Deny each and every allegation contained in paragraph 187.

61. Deny each and every allegation contained in paragraph 188 as far as they apply to the defendant Corning. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 188 not hereinbefore denied sufficient to form a belief as to the truth thereof.

62. Deny that they have any knowledge or information as to any of the allegations contained in paragraphs 189 and 190, sufficient to form a belief as to the truth thereof.

63. Admit the allegations of paragraph 191 but allege that more than one-third of Corning's net profit was from income other than income or profit derived from sales of manufactured goods and the net profit on sales was approximately 9-1/3%.

64. Deny that they have any knowledge or information as to any of the allegations contained in paragraphs 192, 193, 194, 195, 196, 197, 198, 200, 203, 204, 205 and 206, sufficient to form a belief as to the truth thereof.

65. Deny each and every allegation contained in paragraph 199 insofar as they apply to Hartford. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 199 not hereinbefore denied, sufficient to form a belief as to the truth thereof.

66. Admit that Hartford has provided in some of its lease and license agreements that improvements on licensed machinery made by the licensee shall become the property of the licensor. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 201 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

[fol. 449] 67. Admit that Hartford has required Corning as its licensee to agree not to contest the validity of the patents under which it is licensed. Deny that this requirement includes all Hartford patents issued subsequent to the date of the license. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 202 not hereinbefore admitted or denied, sufficient to form a belief as to the truth thereof.

68. Admit that no licensee of Hartford can produce all types of glassware on feeding machines and some forming machines licensed by Hartford. Deny that every licensee of Hartford except Corning is not permitted to use the machinery licensed from Hartford for bulbs and certain types of heat resistant ware and other types of pressed and blown glassware. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 207 not hereinbefore admitted or denied, sufficient to form a belief as to the truth thereof.

69. Admit that in several instances Hartford has given an exclusive license to use machinery in connection with the manufacture of specified products. For example, by an agreement dated April 9, 1932, American Thermos Bottle Company is granted an exclusive license to make certain types of vacuum-thermos bottles on Hartford's machines. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 208 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

70. Deny that they have any knowledge or information as to any of the allegations contained in paragraphs 209 and 210 sufficient to form a belief as to the truth thereof.

71. Admit that every licensee of Hartford is limited as to the type or kind of glassware that may be manufactured by it under the Hartford license agreements and is speci-

fically excluded from using such machinery for other types and kinds of glassware. Deny each and every allegation [fol. 450] contained in paragraph 211 not hereinbefore admitted.

72. Deny that they have any knowledge or information as to any of the allegations contained in paragraphs 212, 213, 215 and 216, sufficient to form a belief as to the truth thereof.

73. Admit that Macbeth-Evans Glass Company, before it was consolidated with defendant Corning, was limited in the manufacture of hot mold tumblers to 150,000 gross per annum. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 214 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

74. Deny each and every of the allegations contained in paragraph 217.

75. Deny that they have any knowledge or information as to any of the allegations contained in paragraphs 218, 219 and 225 sufficient to form a belief as to the truth thereof.

76. Deny each and every of the allegations contained in paragraph 226.

77. Deny that they have any knowledge or information as to any of the allegations contained in paragraphs 227, 228 and 229, sufficient to form a belief as to the truth thereof.

78. Deny each and every of the allegations contained in paragraph 230.

[fol. 451] Wherefore, defendants demand judgment that plaintiff's complaint be dismissed with costs.

McMahon, Webber & Hayward, by John B. McMahon, Franklin A. Hayward, Attorneys for Corning Glass Works, Eugene C. Sullivan, William H. Curtiss, George D. Macbeth, Glen W. Cole, P. W. Jenkins, J. L. Peden, W. C. Decker, Arthur L. Day and George B. Hollister. Office and Post Office Address, 1333 Nicholas Building, Toledo, Ohio.

John Lord O'Brian, of Counsel, 505 Iroquois Building, Buffalo, New York.

[fol. 452] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF EMPIRE MACHINE CO., ET AL.—Filed March 15, 1940

The defendants Empire Machine Company, Alanson B. Houghton, Amory Houghton, Arthur A. Houghton, Jr., and Alexander D. Falck, answering plaintiff's complaint herein:

1. Admit the allegations of paragraph 1 thereof, except they deny that any of them or Corning or any of its officers or directors or Hartford or any of its officers or directors have violated or intend to violate Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act, and deny that they have any knowledge or information as to any of the allegations that the other defendants herein have violated or intend to violate Sections 1 and 2 of the Sherman Act or Section 3 of the Clayton Act, sufficient to form a belief as to the truth thereof.

2. Admit that certain of the defendants conduct their business and are found within the Western Division of the Northern District of Ohio, and that interstate trade and commerce involved in the glass industry are carried on in part within such District and Division. Deny any unlawful acts and violations described in said complaint on the part of the answering defendants or Corning or any of its officers or directors or Hartford or any of its directors or officers and deny that they have any knowledge or information as to any acts and violations described in paragraph 2 in the complaint as committed by the other defendants, sufficient to [fol. 453] form a belief as to the truth thereof.

3. Deny each and every of the following allegations of paragraph 3: that said defendant Hartford does not commercially manufacture glass making machinery; that said defendant is simply a patent holding company as it is primarily a research and engineering company. Admit that said defendant owns patents and admit the allegations of said paragraph not hereinbefore denied.

4. Admit the allegations of paragraph 4.

5. Deny each and every of the following allegations of paragraph 5: that Empire is a patent holding company for the defendant Corning. Admit the allegations of said paragraph not hereinbefore denied.

6. Deny each and every of the following allegations of paragraph 6: that Alanson B. Houghton and Arthur A. Houghton, Jr. have been and now are officers of Empire; that Alanson B. Houghton now is a director of Empire; that Alanson B. Houghton, Amory Houghton and Arthur A. Houghton, Jr. have been or now are officers of Hartford; that Houghton Associates, Inc. is organized and doing business in the State of New York. Admit the allegations of said paragraph not hereinbefore denied.

7. Admit that the defendant Owens-Illinois Glass Company is a corporation with its principal office at Toledo, Ohio; that it is the largest container manufacturer and distributor in the United States. Deny that they have any knowledge or information as to any of the allegations in paragraph 7 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

8. Admit that the Hazel-Atlas Glass Company is a corporation with its principal office at Wheeling, West Virginia; that it is the second largest container manufacturer and distributor in the United States. Deny that they have any knowledge or information as to any of the allegations in paragraph 8 contained not hereinbefore admitted, suffi-
[fol. 454] cient to form a belief as to the truth thereof.

9. Admit that the defendant Thatcher Manufacturing Company is a corporation with its principal office at Elmira, New York; that it is the largest manufacturer and distributor of milk bottles in the United States. Deny that they have any knowledge or information as to any of the allegations in paragraph 9 contained not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

10. Admit that the defendant Lynch Corporation is a corporation with its principal office at Anderson, Indiana. Deny that they have any knowledge or information as to any of the allegations in paragraph 10 thereof not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

11. Admit that the defendant Anchor Hocking Glass Corporation is a corporation with its principal office at Lancaster, Ohio. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 11 thereof not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

12. Deny each and every of the following allegations of paragraph 12: that the Levis Group has been actively interested in the management of the defendant Hartford and said Group has been directly or indirectly represented on the Board of Directors of the defendant Hartford. Deny that they have any knowledge or information as to any of the allegations contained in said paragraph not hereinbefore denied, sufficient to form a belief as to the truth thereof.

13. Admit that Liberty Glass Company is a corporation with its principal office at Sapulpa, Oklahoma. Deny that they have any knowledge or information as to any of the other allegations in paragraph 13 thereof sufficient to form a belief as to the truth thereof.

14. Admit that the defendant Ball Brothers Company is a corporation with its principal office at Muncie, Indiana. [fol. 455] Deny that they have any knowledge or information as to any of the allegations contained in paragraph 14 thereof, except as hereinbefore admitted, sufficient to form a belief as to the truth thereof.

15. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 15 sufficient to form a belief as to the truth thereof.

16. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 16 sufficient to form a belief as to the truth thereof.

17. Admit that the defendants F. Goodwin Smith, Bartlett Arkell, Alexander D. Falck, Robson D. Brown, John C. Hostetter, Roger M. Eldred, Karl E. Peiler, Arthur T. Safford, Jr., Theodore L. Champeau, William H. Honiss, A. M. Pease, Amory Houghton, Arthur A. Houghton, Jr., and Alanson B. Houghton have been for various times and are officers or directors of the defendant Hartford; that each of said individual defendants has participated and

participates in the direction and management of the defendant Hartford but only to the extent of performing various official acts within his authority as such officer and/or director, since he individually became an officer or director of Hartford; and admit that said individual defendants, or some of them, as officers and/or directors of Hartford but not otherwise have approved, authorized, ordered and done some but not all of the acts alleged in the complaint to have been performed by Hartford as admitted in this answer. Deny that any of the answering defendants have approved, authorized, ordered or done any act in violation of Sections 1 and 2 of the Sherman Act or Section 3 of the Clayton Act. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 17 not hereinbefore admitted or denied sufficient to form a belief as to the truth thereof.

18. Admit that the individual defendants Alexander D. Falck, Eugene C. Sullivan, Amory Houghton, Arthur A. Houghton, Jr., William H. Curtiss, George D. Macbeth, [fol. 456] Glen W. Cole, P. W. Jenkins, J. L. Peden, W. C. Decker, Alanson B. Houghton, John L. Thomas, George B. Hollister and Arthur L. Day have been officers or directors of the defendant Corning and that all but George B. Hollister, Arthur L. Day, W. C. Decker and John L. Thomas are officers or directors of such defendant; that each of said individual defendants has participated in the direction and management of the defendant Corning and the present officers and directors participate in such direction and management but only to the extent of performing various official acts within his authority as such officer and/or director since he individually became an officer or director of said defendant Corning; that said individual defendants, or some of them, as officers and/or directors of defendant Corning but not otherwise have approved, authorized, ordered and done some but not all of the acts alleged in the complaint to have been performed by defendant Corning as admitted in this answer. Deny that any of the individual defendants mentioned in paragraph 18 have approved, authorized, ordered or done or participated in any act in violation of Sections 1 and 2 of the Sherman Act or Section 3 of the Clayton Act, and deny each and every allegation in paragraph 18 alleged not hereinbefore admitted or denied.

19. Admit that the individual defendants Alexander D. Falck, Alanson B. Houghton, Amory Houghton, Arthur L. Day and Arthur A. Houghton, Jr. have been and that Alexander D. Falck, Amory Houghton and Arthur A. Houghton, Jr. are officers or directors of defendant Empire; that each of such individual defendants has participated and that said present officers and directors participate in the direction and management of the defendant Empire but only to the extent of performing various official acts within his authority as such officer and/or director since he individually became an officer or director of said defendant Empire; that said individual defendants or some of them as officers and/or directors of defendant Empire but not otherwise have approved, authorized, ordered and done some but not [fol. 457] all of the acts alleged in the complaint to have been performed by defendant Empire, as admitted in this answer but deny that any of said individual defendants have approved, authorized, ordered or done or participated in any act in violation of Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act. Deny each and every allegation contained in paragraph 19 not hereinbefore admitted or denied.

20. Admit that William E. Levis and certain other of the individual defendants mentioned in paragraph 20 are officers or directors of the defendant Owens. Deny that they have any knowledge or information of any of the allegations in said paragraph 20 contained not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

21. Admit that J. Harrison McNash and certain other of the individual defendants mentioned in paragraph 21 thereof are officers or directors of the defendant Hazel-Atlas. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 21 thereof not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

22. Admit that H. C. Mandeville and certain other of the individual defendants mentioned in paragraph 22 thereof are officers or directors of the defendant Thatcher. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 22 thereof not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

23. Admit that Thomas Chandler Werbe and certain other of the individual defendants mentioned in paragraph 23 are officers and directors of Lynch. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 23 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

24. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 24 suffi- [fol. 458] cient to form a belief as to the truth thereof.

25. Admit that the defendant Isaac J. Collins and certain of the individual defendants mentioned in paragraph 25 of said complaint are officers or directors of the defendant Anchor Hocking. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 25 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

26. Admit that the defendant Frank Clayton Ball and some of the other individual defendants mentioned in paragraph 26 are officers or directors of the defendant Ball Brothers. Deny that they have any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph 26 thereof not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

27. Deny that the defendant Empire Machine Company is engaged in trade and commercce between and among the several States of the United States. Admit that the corporate defendants other than Empire, Glass Container Association of America, Inc. and the Stevenson Corporation are engaged in trade and commerce between and among the several States of the United States. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 27 of said complaint not hereinbefore admitted or denied, sufficient to form a belief as to the truth thereof.

28. Admit that the glass machinery and various kinds of glassware referred to in said complaint are manufactured in various localities and part thereof is shipped and distributed through channels of interstate trade and commerce. Deny each and every allegation of paragraph 28 not hereinbefore admitted.

29. Deny that the glassware industry may be divided into two divisions—glass container and pressed and blown glassware as alleged in paragraph 29 because containers are pressed or blown or pressed and blown, and electric light bulbs are generally produced by merely blowing; some [fol. 459] tableware is produced by pressing and blowing, some by pressing alone and some by blowing alone; that heat resistant ware is produced in any of the three ways last named; that lamp chimneys and scientific or laboratory ware are generally produced by blowing; that signal and optical ware and automobile glassware are generally produced by pressing. Admit that packers ware, pharmaceutical, prescription and toilet ware, liquor and beer bottles, fruit jars, jelly glasses, milk bottles and the like are known to the trade as glass containers. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 29 not hereinbefore admitted or denied sufficient to form a belief as to the truth thereof.

30. Admit that prior to 1905 glassware was made principally by hand or by semiautomatic machinery in the United States. Deny that no manufacturer could commercially engage in the business of producing glassware unless automatic machinery was used. Deny that they have any knowledge or information as to any of the allegations of paragraph 30 not hereinbefore admitted or denied sufficient to form a belief as to the truth thereof.

31. Admit that prior to 1906 the predecessor of defendant Corning was engaged in the manufacture of electric light bulbs and specialty glassware such as signal and optical ware and had the following patents: (1) On process of and apparatus for vertical tube drawing; (2) Apparatus and method for pressing clinical thermometer tubing blanks; (3) Method of pressing blanks for lantern globes: (4) Lantern globe as an article; (5) Mold for manufacturing lantern globes; (6) Lens. Deny each and every allegation in paragraph 31 contained not hereinbefore admitted.

32. Admit that prior to 1916 Hartford-Fairmont, the predecessor of Hartford, developed inventions, which were the basis of patents, for an automatic gob-feeding machine to produce glass containers and other glassware. Deny that they have any knowledge or information as to any of

[fol. 460] the allegations in paragraph 32 contained not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

33. Admit that since 1916 one of the commercial methods for manufacturing glass containers and some blown glassware has been as follows: Sand, soda-ash, limestone and cullett (broken glass) are mixed and then fed into the hottest portion of a furnace or tank; that the melted mixture or batch then flows slowly into cooler sections of the furnace from which it is fed into the glass container making machines; that some glass container making machines are fed by suction and others are fed by what is sometimes called "gob-feeding"; that in one of the "gob-feeding" processes the molten glass is fed through an orifice by a mechanism which causes the glass to be extruded in gobs or separate drops with shapes roughly approximating those of the molds in which they drop when cut off by a pair of shears near the orifice; admit that in one suction process the molten glass is sucked into receptacles which revolve around a center pillar and each of which in turn dips into the molten glass and sucks up its charge; that after each mold rises a knife cuts the glass in the mold from the body of molten glass; that in one "gob-feeding" process the molds into which the molten glass is poured are parts of a separate machine known as a former; that there are several types of forming machines manufactured and sold by independent companies; that after the glassware leaves the forming machine it is annealed to prevent the ware from cracking or breaking when subject to rapid changes in temperature; that the annealing process is sometimes but not always carried by a conveyor into a lehr or oven where it is stacked on a belt which moves slowly through an annealing chamber. Deny that they have any knowledge or information as to any of the following allegations of paragraph 33: That there have been little or no instance of litigation with respect to tanks or furnaces used by different companies engaged in the manufacture of glassware, suffi- [fol. 461] cient to form a belief as to the truth thereof. Deny each and every allegation in paragraph 33 not hereinbefore admitted or controverted.

34. Deny each and every allegation contained in paragraph 34.

35. Deny each and every allegation contained in paragraph 35.

36. Deny each and every allegation contained in paragraph 36.

37. Deny each and every allegation contained in paragraph 37.

38. Deny each and every allegation contained in paragraph 38.

39. Admit that in 1916 the Commissioner of Patents declared interference between claims of applications belonging to Empire and claims of applications belonging to Hartford-Fairmont Company. Deny each and every allegation in paragraph 39 contained not hereinbefore admitted.

40. Admit that negotiations were had after the Commissioner of Patents had declared interference in 1916, as admitted in paragraph 39, and prior to June 30, 1916 between Hartford-Fairmont and Empire. Deny each and every allegation contained in paragraph 40 of said complaint not hereinbefore admitted.

41. Admit that under date of June 30, 1916 Hartford-Fairmont and defendant Empire entered into an agreement by which Hartford-Fairmont granted Empire Machine an exclusive license to use the so-called Paddle Feeder, which was covered by a patent application of Hartford for the production of:

(a) Parts of electric lamps and ray tubes, other illuminating and light diffusing glassware to be used in connection with artificial illumination not being included in this subdivison.

(b) Signal and optical glassware.

(c) Glassware intended and adapted for heat resisting, chemical resisting and low expansion purposes, made from [fol. 462] glass containing one per cent (1%) or more of boric oxide.

(d) Glassware intended and adapted for holding food in process of cooking.

(e) Mold-blown articles of glass insofar as the same are or may be used for electrical purposes or in connection with electric illumination.

and to use the apparatus and methods described in its own applications (Chamberlin) free from any claims of Hartford's in said fields, and Empire Machine granted to Hartford the exclusive license to use the apparatus and methods described in its own applications free from any claims of Empire for the production of:

(a) Pressed glassware, except illuminating and light diffusing glassware to be used in connection with artificial illumination.

(b) Wide and semi-wide mouth ware not blown in paste molds, except illuminating and light diffusing glassware to be used in connection with artificial illumination.

(c) Narrow-neck ware not blown in paste molds and weighing more than seven ounces.

(d) Narrow-neck ware weighing seven ounces (7 oz.) or less, not blown in paste molds and intended and adapted as containers for beverages or food products. Deny each and every allegation in paragraph 41 contained not hereinbefore admitted.

42. Admit that under date of October 6, 1922 Hartford-Fairmont and defendant Empire Machine and the individual defendants Alanson B. Houghton, Alexander D. Falck, Bartlett Arkell, William H. Honiss, J. Dale Dilworth, F. Goodwin Smith and Arthur L. Day and all the other stockholders of Hartford-Fairmont and Empire Machine entered into an agreement known as the "Agreement for Formation of Hartford-Empire Company." Under this agreement defendant Hartford was organized and had transferred to it all of the stock of Hartford-Fairmont and certain of the assets of Empire Machine including all of Empire Machine's patents and inventions. That Hartford [fol. 463] issued to Empire Machine forty-five per cent (45%) of its common stock, and Empire Machine agreed to turn back ten per cent (10%) of said stock to Hartford for sale to its employees or to anyone upon unanimous vote of the Hartford's Board of Directors. That the balance of the issued common stock of Hartford and the greater part of an issue of preferred stock was issued to

the former stockholders of Hartford-Fairmont. For the exact terms of said agreement reference is made thereto, a copy of which is in possession of the plaintiff. Deny each and every allegation of paragraph 42 not hereinbefore admitted.

43. Admit the following allegations of paragraph 43: that on the same day and under date of October 6, 1922, the defendants Hartford, Corning, and Empire Machine, with Hartford-Fairmont entered into an "Agreement Relating to Patent Rights and Formulas"; that it was an express condition of the Formation Agreement referred to in paragraph 42 hereof, that the Agreement Relating to Patent Rights and Formulas be entered into between defendants Hartford, Corning, and Empire Machine Co., and Hartford-Fairmont. Deny that said instrument was actually signed by all of the parties thereto on October 6, 1922.

44. Admit that the glassware field that was specified in the June 30, 1916 agreement referred to in paragraph 41 was extended and more fully defined under the agreement referred to in paragraph 43; that Corning therein reserved a "shopright" to use its patents in which it gave rights to Hartford. Deny each and every allegation of paragraph 44 not hereinbefore admitted.

45. Admit that Hartford and its predecessor, Hartford-Fairmont, for a number of years last past have issued licenses to a number of glassware manufacturers for the production of different types of glassware and particularly pressed and blown glassware other than heat resistant glassware as defined in the agreement of October 6, 1922, referred to in paragraph 43 of the complaint. Deny each [fol. 464] and every allegation in paragraph 45 not hereinbefore admitted.

46. Admit that subsequent to 1922 and between 1929 and 1931, in connection with a proposed revision of the agreement relating to patent rights and formulas, dated October 6, 1922, between defendants Hardford, Corning and Empire Machine Company and Hartford-Fairmont, mentioned in paragraph 43 of the complaint, which revision has never been carried out, Corning asked Hartford that the proposed revised contract give to Corning a right under Hartford

inventions to manufacture containers from ordinary glass, and that there was a disagreement among the officers of Hartford as to whether or not to so revise the contract, and that Corning has refrained and now refrains from using Hartford machinery in such field. Deny each and every allegation in paragraph 46 contained not hereinbefore admitted.

47. Admit the allegations contained in paragraph 47.

48. Admit that Corning granted to Fry Glass Company a limited license to make heat resistant ware in 1920 and a limited license to McKee Glass Company in 1921; that Corning refused to grant licenses under its patents for heat resisting ware to certain manufacturers prior to the expiration of such patents; that by the agreement of 1922 Hartford granted to Corning the exclusive license to use its machines on heat resistant ware as defined in said contract. Deny each and every allegation in paragraph 48 contained not hereinbefore admitted.

49. Admit that Hartford had divested itself by the 1922 agreement of the right to issue licenses to McKee Glass Company and to Macbeth-Evans Company so as to permit each of them to manufacture certain types of heat resisting ware on machinery covered by patents of Hartford. Allege that Corning has offered to McKee Glass Company and Macbeth-Evans Company such sublicenses to manufacture certain articles, which offer each company refused. Deny [fol. 465] each and every allegation of paragraph 49 not hereinbefore admitted.

50. Admit that in 1937 Hartford refused to license Indiana Glass Company to manufacture heat resisting ware on machinery covered by patents of defendant Hartford and stated that such refusal was based on the fact that it had granted exclusive rights to use its feeding and forming machines for such purpose to Corning; that the Sullivan-Taylor patents belonging to Corning covering the composition of heat resisting ware had expired. Deny each and every allegation in paragraph 50 contained not hereinbefore admitted.

51. Admit that the Hocking Glass Company considered engaging in the manufacture of heat resisting ware; that Corning had exclusive rights to use Hartford's machines

for producing the heat resisting ware defined in the contract of 1922. Deny that they have any knowledge or information as to any of the following allegations in paragraph 51; that at no time since then has it (Anchor Hocking) engaged in such business; that Anchor Hocking made preparations to engage in the manufacture of heat resisting ware, sufficient to form a belief as to the truth thereof. Deny each and every allegation in paragraph 51 not hereinbefore admitted or controverted.

52. Deny each and every allegation in paragraph 52 of said complaint.

53. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 53 sufficient to form a belief as to the truth thereof.

54. Admit that in 1915 Hartford-Fairmont put on the market a glass feeder machine and thereafter licensed various glass manufacturers. Deny that they have any knowledge or information as to any of the other allegations in paragraph 54 sufficient to form a belief as to the truth thereof.

55. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 55 sufficient to form a belief as to the truth thereof.

[fol. 466] 56. Admit that Hartford-Fairmont purchased the Howard feeder patent rights from the Howard Automatic Glass Feeder Company. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 56, not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

57. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 57 sufficient to form a belief as to the truth thereof.

58. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 58 sufficient to form a belief as to the truth thereof.

59. Admit that Hartford-Fairmont Company sued United States Glass Company in 1920 for infringement of patents owned by said Hartford-Fairmont Company and that the suit was decided adversely to Hartford in 1923. Deny that they have any knowledge or information as to any of the

allegations contained in paragraph 59 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

60. Admit that there were negotiations between Owens Bottle Company and defendant Hartford and its predecessor Hartford-Fairmont at various times prior to April 9, 1924, which negotiations were several times definitely broken off; that there were conflicts and disputes between said companies as to patents and inventions relating to glass feeders. Deny each and every allegation contained in paragraph 60 not hereinbefore admitted.

61. Deny each and every allegations contained in paragraph 61 of the complaint.

62. Admit that under date of April 9, 1924, Hartford and Owens and others entered into an agreement entitled "General License Agreement", to which reference is made for a full and accurate statement of its contents and which agreement was cancelled as of July 1, 1932. Deny that they have any knowledge or information as to any of the allegations [fol. 467] contained in paragraph 62 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

63. Admit that under the "General License Agreement" Owens agreed to pay royalties to Hartford (at the lowest rate charged to the other licensees and with a limited exemption with respect to 40 feeding and 40 forming machines) on all inventions licensed under the Agreement and used by Owens; that Hartford agreed to pay Owens one-half of Hartford's "divisible income" from feeding and forming machine inventions, such "divisible income" being Hartford's yearly income less $600,000 from royalty fees and receipts as defined under said agreement. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 63 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

64. Deny each and every allegation contained in paragraph 64.

65. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 65 sufficient to form a belief as to the truth thereof.

66. Admit that during the period from April, 1924 until September 30, 1935, the amounts paid by Hartford to Owens

under the 1924 agreement and under the 1932 agreement substantially exceeded the royalties paid by Owens to Hartford. Deny each and every allegation contained in paragraph 66 not hereinbefore admitted.

67. Deny that they have any knowledge or information as to any of the allegations in paragraph 67 contained, sufficient to form a belief as to the truth thereof.

68. Deny each and every allegation contained in paragraph 68.

69. Admit that under the 1924 agreement Owens granted no right to Hartford to grant sublicenses for the manufacture of glass containers under patents licensed to Hartford by Owens and without the consent of Owens except to manufacturers of the classes stated in section 22 of said agreement and in (a) and (b) of paragraph 69. Deny each and [fol. 468] every allegation contained in said paragraph 69 not hereinbefore admitted.

70. Deny each and every allegation contained in paragraph 70.

71. Deny each and every allegation contained in paragraph 71.

72. Admit that at the time of the making of the 1924 agreement there were a number of companies in no way connected with Hartford or Owens engaged in the business of manufacturing and distributing glass-making machinery; that there were also numerous manufacturers of glass containers who used glass-making machinery neither furnished nor licensed by Hartford or Owens; that many of such manufacturers of glass containers used machinery which trespassed upon patent rights of Hartford and of Owens; that suits were brought to prevent patent infringement. Deny each and every allegation contained in paragraph 72 not hereinbefore admitted.

73. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 73 sufficient to form a belief as to the truth thereof.

74. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 74 sufficient to form a belief as to the truth thereof.

75. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 75 sufficient to form a belief as to the truth thereof.

76. Admit that in 1925 Hartford, with Owens sharing one-half the cost, took an option from the Whitall Tatum Company on the Headley and Thompson patent applications for forming machinery which applications contained claims covering forming machines of Owens, forming machines of Hartford and other numerous forming machines employed by Hartford feeder licensees with Hartford feeders, and that in 1929 this option was extended by a new agreement between the parties.

77. Admit that in 1925 William J. Miller sold to Hartford certain glass feeder patents and certain glass feeder [fol. 469] patent applications for the approximate sum of $145,000, some of which were then involved in numerous patent office interferences with applications of Hartford and applications of Owens; that Owens and Hartford jointly shared the expense of the acquisition of said patent rights. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 77 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

78. Admit that in 1935 Hartford brought suit against Florida Glass Manufacturing Company, a user of Miller feeders, and obtained a preliminary injunction restraining the Florida Company from infringing Peiler Patent No. 1,655,391; thereupon Florida Glass Manufacturing Company applied for and was given a license from Hartford permitting the continued use of its Miller feeders; that Knox Bottle Company took a Hartford license; that a suit was also instituted against F. E. Reed Glass Company, which suit is now pending. Deny that they have any knowledge or information as to the allegations contained in paragraph 78 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

79. Admit that in 1925 Hartford acquired the Tucker and Reeves patent rights and Owens acquired license rights thereunder for which, together with other rights, Hartford and Owens each paid Tucker, Reeves & Beatty $800,000. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 79

not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

80. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 80, sufficient to form a belief as to the truth thereof.

81. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 81 sufficient to form a belief as to the truth thereof.

82. Deny that they have any knowledge or information [fol. 470] as to any of the allegations contained in paragraph 82 sufficient to form a belief as to the truth thereof.

83. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 83 sufficient to form a belief as to the truth thereof.

84. Admit that Hartford brought a feeder patent infringement suit against the Kearns-Gorsuch Bottle Company, a subsidiary of Hazel Atlas Glass Company. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 84 not hereinbefore admitted sufficient to form a belief as to the truth thereof.

85. Admit that Hartford purchased certain United States patent rights offered to Hartford by Frank O'Neill and/or by O'Neill Machine Company and that such patent rights related to glass feeders and to feeder-fed forming machines and that Knox Glass Bottle Company took a license from Hartford under Hartford's feeding machines. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 85 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

86. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 86 sufficient to form a belief as to the truth thereof.

87. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 87 sufficient to form a belief as to the truth thereof.

88. Admit that Hartford instituted suit against Swindell Bros., Inc., claiming that the Amsler-Morton lehrs used by Swindell Bros., Inc. infringed Hartford patents. Deny that they have any knowledge or information as to

any of the allegations in paragraph 88 contained, not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

89. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 89 sufficient to form a belief as to the truth thereof.

[fol. 471] 90. Admit that Hartford has brought infringement suits against Shawkee Manufacturing Company and McKee Glass Company and that Hartford infringement suits are now pending against Obear-Nester Company and F. E. Reed Glass Company. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 90 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

91. On information and belief deny each and every allegation contained in paragraph 91.

92. Admit the allegations contained in paragraph 92 except that they deny that paragraph 69 of the complaint accurately sets out the provisions of section 22 of the April 9, 1924 agreement.

93. Deny that they have any knowledge or information as to any of the allegations in paragraph 93 contained, sufficient to form a belief as to the truth thereof.

94. Deny each and every allegation contained in paragraph 94 except that Hazel-Atlas is the second largest manufacturer of glass containers in the United States.

95. Admit that Hartford brought suit against Kearns-Gorsuch Company, a subsidiary of Hazel-Atlas. Deny that they have ny knowledge or information as to any of the allegations contained in paragraph 95 not hereinbefore admitted sufficient to form a belief as to the truth thereof.

96. Admit that Hartford brought suit against Hazel-Atlas claiming that the feeders developed by Hazel-Atlas infringed some patent of Hartford and that after several years of litigation the Circuit Court of Appeals in the Third Circuit on May 5, 1932 (*Hartford-Empire Company v. Hazel-Atlas Glass Company*, 59 Fed. (2d) 399) held that the Hazel-Atlas feeder infringed Hartford's patent. Deny that they have any knowledge or information as to any of the al-

legations in paragraph 96 contained not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

[fol. 472] 97. Admit that Hartford and Owens entered into negotiations with Hazel-Atlas with a view toward licensing Hazel-Atlas under the Hartford feeder patent rights and to settle the litigation and other controversies then existing between Hartford and Hazel-Atlas. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 97 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

98. Admit the allegations contained in paragraph 98.

99. Admit the allegations contained in paragraph 99.

100. Deny that paragraph 100 correctly states the terms of the July 1, 1932 General License Agreement between Hartford and Hazel-Atlas, and refer to said agreement for full and accurate statements of its contents. Deny each and every allegation contained in paragraph 100 not hereinbefore admitted.

101. Admit that under the Hazel-Atlas and Hartford General License Agreement of July 1, 1932 Hazel-Atlas paid Hartford $1,000,000 and agreed to pay royalties to Hartford on all inventions licensed by the agreement and used by Hazel-Atlas, including Hazel-Atlas' inventions licensed to Hartford; that Hartford agreed to pay Hazel-Atlas annually one-third of its "net income," as defined in said agreement, and that Hartford's exemption was increased from $600,000 to $850,000. Deny that paragraph 101 correctly states the terms of said agreement and refer to said agreement for an accurate statement of its contents. Deny each and every allegation contained in paragraph 101 not hereinbefore admitted.

102. Admit that under the General License Agreement of July 1, 1932 between Hartford and Owens the April 9, 1924 agreement between the same parties was cancelled. Deny that paragraph 102 correctly states the terms of said agreement and refer to said agreement for its accurate terms. Deny each and every allegation contained in paragraph 102 not hereinbefore admitted.

103. Deny that paragraph 103 correctly states the terms [fol. 473] of the new general license agreement of July 1,

1932 and refer to said agreement for its accurate terms. Deny each and every allegation contained in paragraph 103 not hereinbefore admitted.

104. Deny that paragraph 104 correctly states the terms of the Suction Invention Agreement of July 1, 1932 between Hartford and Owens and refer to said agreement for full and accurate statements of its contents. Deny — and every allegation contained in paragraph 104 not hereinbefore admitted.

105. Deny each and every allegation contained in paragraph 105.

106. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 106 sufficient to form a belief as to the truth thereof.

107. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 107 sufficient to form a belief as to the truth thereof.

108. Admit the allegations contained in paragraph 108.

109. Deny each and every of the following allegations of paragraph 109: that the effect of the July 1, 1932 agreement between Hartford and Owens was to reaffirm the April 9, 1924 agreement between them, that Owens continued to recognize the dominance of Hartford in the field of licensing glass machinery and Hartford recognized the dominance of Owens in the manufacture of glass containers. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 109 not hereinbefore denied, sufficient to form a belief as to the truth thereof.

110. Admit that one effect of the July 1, 1932 agreement between Hartford and Hazel-Atlas was to take in as a Hartford licensee the then largest manufacturer of glass containers not theretofore licensed under Hartford patents. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 110 not here- [fol. 474] inbefore admitted, sufficient to form a belief as to the truth thereof.

111. Deny each and every allegation contained in paragraph 111.

112. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 112 sufficient to form a belief as to the truth thereof.

113. Admit that Hartford bought the Headley-Thompson applications. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 113 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

114. Admit that on August 23, 1933, defendants Lynch and Hartford entered into an agreement. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 114 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

115. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 115 sufficient to form a belief as to the truth thereof.

116. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 116 sufficient to form a belief as to the truth thereof.

117. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 117 sufficient to form a belief as to the truth thereof.

118. Deny each and every allegation contained in paragraph 118.

119. Deny each and every allegation contained in paragraph 119.

120. Deny each and every allegation contained in paragraph 120.

121. Deny each and every allegation contained in paragraph 121.

122. Deny each and every allegation contained in paragraph 122.

[fol. 475] 123. Admit that Hartford instituted suit against Swindell Brothers, Inc. claiming that the Amsler-Morton lehrs used by Swindell Brothers, Inc. infringed Hartford's patents and that the Circuit Court of Appeals for the Fourth Circuit (*Hartford-Empire Company v. Swindell Brothers, Inc.*, 96 Fed. (2d) 227 (1938) modified by 99 Fed. (2d) 61

(1938)) reversed a decision of the District Court (18 Fed. Supp. 191) and held that the Amsler-Morton lehr infringed Hartford's patents, and that the Supreme Court denied a petition for a writ of certiorari. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 123 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

124. Admit that prior to 1937 Hartford had claimed that the Nagle lehr developed for the defendant Thatcher infringed the Hartford lehr patents. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 124 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

125. Deny each and every allegation contained in paragraph 125.

126. Admit that Owens and Hartford entered into an agreement dated September 30, 1935 by which Owens' right to any of Hartford's yearly income from patented inventions was terminated; that the consideration for said agreement was the payment by Hartford to Owens of $2,500,000. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 126 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

127. Admit that Hartford and Owens entered into the five agreements identified in paragraph 127. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 127 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

[fol. 476] 128. Deny each and every of the allegations contained in paragraph 128.

129. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 129 sufficient to form a belief as to the truth thereof.

130. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 130 sufficient to form a belief as to the truth thereof.

131. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 131 sufficient to form a belief as to the truth thereof.

132. Admit that Thatcher procured licenses from Hartford to manufacture milk bottles on a so-called single feeder. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 132 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

133. Admit that Hartford and Thatcher entered into an agreement under date of April 13, 1928, entitled "Consolidated Agreement." Deny that they have any knowledge or information as to any of the allegations contained in paragraph 133 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

134. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 134 sufficient to form a belief as to the truth thereof.

135. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 135 sufficient to form a belief as to the truth thereof.

136. Admit the allegations contained in paragraph 136.

137. Admit that by 1934 defendant Liberty Glass had acquired an unrestricted license from defendant Hartford for the manufacture of milk bottles. Deny that they have any knowledge or information as to any of the allegations [fol. 477] contained in paragraph 137 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

138. Admit that Hartford and Thatcher entered into an agreement dated January 1, 1936. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 138 not hereinbefore admitted sufficient to form a belief as to the truth thereof.

139. Admit that with the exception of the licenses to defendants Owens, Thatcher and Liberty Glass, the licensees of Hartford that are authorized to manufacture milk bottles under Hartford patents are restricted in their production under such patents. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 139 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

140. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 140 sufficient to form a belief as to the truth thereof.

141. Deny that the reason that Hartford has refused from time to time to license additional milk bottle production was in order to protect Owens, Thatcher and Liberty from competition. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 141 not hereinbefore denied, sufficient to form a belief as to the truth thereof.

142. Deny that Hartford has aided and abetted or is aiding and abetting monopoly and restraint of trade and commerce in the manufacture and distribution of glass milk bottles. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 142 not hereinbefore denied, sufficient to form a belief as to the truth thereof.

143. Deny each and every allegation contained in paragraph 143.

144. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 144 sufficient to form a belief as to the truth thereof.

[fol. 478] 145. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 145 sufficient to form a belief as to the truth thereof.

146. Admit that at no time prior to March 25, 1933 did Ball Brothers have a license from Hartford to use machines covered by patents owned by Hartford. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 146 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

147. Admit that between November, 1924 and March 25, 1933 Hartford carried on negotiations with Ball Brothers with a view to inducing Ball Brothers to take a license to manufacture fruit jars on Hartford machinery and that Ball Brothers had refused to take a license up to said date. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 147 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

148. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 148 sufficient to form a belief as to the truth thereof.

149. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 149 sufficient to form a belief as to the truth thereof.

150. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 150 sufficient to form a belief as to the truth thereof.

151. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 151 sufficient to form a belief as to truth thereof.

152. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 152 sufficient to form a belief as to the truth thereof.

153. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 153 sufficient to form a belief as to the truth thereof.

[fol. 479] 154. Admit that under the date of March 25, 1933 Hartford entered into an agreement with Ball Brothers and that under said agreement Ball Brothers paid Hartford $400,000 and that Hartford reacquired from the General Glass Company the license to it to manufacture fruit jars. Admit that Ball Brothers agreed to pay royalties for the use of Ball Brothers' feeders which Hartford claimed infringed its patents. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 154 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

155. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 155 sufficient to form a belief as to the truth thereof.

156. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 156 sufficient to form a belief as to the truth thereof.

157. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 157 sufficient to form a belief as to the truth thereof.

158. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 158 sufficient to form a belief as to the truth thereof.

159. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 159 sufficient to form a belief as to the truth thereof.

160. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 160 sufficient to form a belief as to the truth thereof.

161. Admit that since the March 25, 1933 agreement Hartford has refused to license additional fruit jar production under its patents. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 161 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

162. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 162 sufficient to form a belief as to the truth thereof.

[fol. 480] 163. Deny each and every of the allegations contained in paragraph 163.

164. Deny that Hartford has aided and abetted and is aiding and abetting any monopoly and restraint of trade and commerce in the manufacture and distribution of glass fruit jars in the United States. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 164 not hereinbefore denied, sufficient to form a belief as to the truth thereof.

165. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 165 sufficient to form a belief as to the truth thereof.

166. Admit that prior to 1931 Isaac J. Collins was a stockholder and director of Hartford. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 166 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

167. Admit that in 1935 Thatcher sold its interest in General Glass Company to Hocking Glass Company. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 167 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

168. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 168 sufficient to form a belief as to the truth thereof.

169. Deny each and every of the following allegations of paragraph 169: that Hartford in furtherance of the conspiracy, monopoly and combination in restraint of trade induced Hocking Glass Company, Hartford's licensee, and Anchor Cap Company to merge into defendant Anchor-Hocking. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 169 not hereinbefore denied, sufficient to form a belief as to the truth thereof.

170. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 170 sufficient to form a belief as to the truth thereof.

[fol. 481] 171. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 171 sufficient to form a belief as to the truth thereof.

172. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 172 sufficient to form a belief as to the truth thereof.

173. Deny each and every of the allegations contained in paragraph 173 so far as they refer to the answering defendants and to Corning and its officers and directors and to Hartford and its officers and directors. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 173 not hereinbefore denied, sufficient to form a belief as to the truth thereof.

174. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 174 sufficient to form a belief as to the truth thereof.

175. Deny each and every allegation contained in Paragraph 175.

176. Deny each and every allegation contained in paragraph 176.

177. Deny each and every allegation contained in paragraph 177.

178. Deny each and every allegation contained in paragraph 178.

179. Deny each and every allegation contained in paragraph 179.

180. Deny each and every of the following allegations contained in paragraph 180: that Corning is the recognized price leader in the industry for heat resistant glassware; that at all times while said arrangement has been in effect Hartford has used and is now using its power and domination as the only licensor of automatic glass making machinery in the United States to enforce this system of price leadership and prevent any manufacturer of glass containers from selling any type of container at less than prices fixed for that type by the price leader. Deny that they have any knowledge or information as to any of the [fol. 482] allegations contained in paragraph 180 not hereinbefore denied, sufficient to form a belief as to the truth thereof.

181. Deny each and every of the allegations contained in paragraph 181 as far as they apply to Corning and Hartford. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 181 not hereinbefore denied, sufficient to form a belief as to the truth thereof.

182. Admit that Hartford's license agreements generally give Hartford the right to enter the licensee's premises in order to examine and inspect the licensee's licensed machinery and equipment; that Hartford has exercised such right and collects data with respect to its licensee's production. Deny each and every allegation contained in paragraph 182 not hereinbefore admitted.

183. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 183 sufficient to form a belief as to the truth thereof.

184. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 184 sufficient to form a belief as to the truth thereof.

185. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 185 sufficient to form a belief as to the truth thereof.

186. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 186 sufficient to form a belief as to the truth thereof.

187. Deny each and every allegation contained in paragraph 187.

188. Deny each and every allegation contained in paragraph 188 as far as they apply to the defendants Corning and Hartford. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 188 not hereinbefore denied sufficient to form a belief as to the truth thereof.

[fol. 483] 189. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 189 sufficient to form a belief as to the truth thereof.

190. Admit that in the year 1937 Hartford's total income was $3,605,446; its net income was $1,934,120, and that the earnings of Hartford and its predecessor Hartford-Fairmont from 1912 to 1930 was less than 9% of its invested capital. Deny each and every allegation in paragraph 190 not hereinbefore admitted.

191. Admit the allegations of paragraph 191 but allege that more than one-third of Corning's net profit was from income other than income or profit derived from sales of manufactured goods and the net profit on sales was approximately 9⅛%.

192. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 192 sufficient to form a belief as to the truth thereof.

193. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 193 sufficient to form a belief as to the truth thereof.

194. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 194 sufficient to form a belief as to the truth thereof.

195. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 195 sufficient to form a belief as to the truth thereof.

196. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 196 sufficient to form a belief as to the truth thereof.

197. Deny that they have any knowledge or information [fol. 484] as to any of the allegations contained in paragraph 197 sufficient to form a belief as to the truth thereof.

198. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 198 sufficient to form a belief as to the truth thereof.

199. Deny each and every allegation contained in paragraph 199 insofar as it applies to Hartford. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 199 not hereinbefore denied, sufficient to form a belief as to the truth thereof.

200. Deny each and every of the allegations contained in paragraph 200.

201. Admit that Hartford has provided in some of its lease and license agreements that improvements on licensed machinery made by the licensee shall become the property of the licensor. Deny that Hartford has thereby discouraged improvement and development of glass machinery by its licensees. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 201 not hereinbefore admitted or denied, sufficient to form a belief as to the truth thereof.

202. Admit that Hartford has required its licensees to agree not to contest the validity of the patents under which they are licensed. Deny that this requirement includes all Hartford patents issued subsequent to the date of the license. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 202 not hereinbefore admitted or denied, sufficient to form a belief as to the truth thereof.

203. Admit that certain of Hartford's license agreements relating to lehrs formerly included a provision limiting the use of the licensed lehrs to use in connection with other Hartford machines. Deny that any such limitation is [fol. 485] still in force and deny each and every of the allegations contained in paragraph 203 not hereinbefore admitted or denied.

204. Deny that they have any knowledge or information as to any of the following allegations of paragraph 204: Frequently, Hartford has limited the number of feeding machines that may be used by the licensees, sufficient to form

a belief as to the truth thereof. Deny each and every allegation contained in paragraph 204 not hereinbefore controverted.

205. Deny each and every allegation contained in paragraph 205.

206. Deny each and every allegation contained in paragraph 206.

207. Admit that no licensee of Hartford can produce all types of glassware on feeding machines and some forming machines licensed by Hartford. Deny that every licensee of Hartford except Corning is not permitted to use the machinery licensed from Hartford for bulbs and certain types of heat resistant ware and other types of pressed and blown glassware. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 207 not hereinbefore admitted, or denied sufficient to form a belief as to the truth thereof.

208. Admit that in several instances Hartford has given an exclusive license to use machinery in connection with the manufacture of specified products. For example, by an agreement dated April 9, 1932, American Thermos Bottle Company is granted an exclusive license to make certain types of vacuum-thermos bottles on Hartford's machines. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 208 not hereinbefore admitted sufficient to form a belief as to the truth thereof.

209. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 209 sufficient to form a belief as to the truth thereof.

[fol. 486] 210. Admit that certain of Hartford's license agreements contain clauses restricting (1) the type or kind of glassware which can be produced; described in some cases by (2) the use of the product manufactured; (3) the character of the glassware as to (a) weight, (b) color, (c) capacity and (d) composition; (4) the quantity which can be produced; and (5) the market in which the licensee may distribute its products, including (a) customer or class of customers to which the products may be sold, and (b) the territory in which the licensee may distribute its product.

Deny each and every allegation contained in paragraph 210 not hereinbefore admitted.

211. Admit that every licensee of Hartford is limited as to the type or kind of glassware that may be manufactured by it under the Hartford license agreements and is specifically excluded from using such machinery for other types and kinds of glassware. Deny each and every allegation contained in paragraph 211 not hereinbefore admitted.

212. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 215 sufficient to form a belief as to the truth thereof.

213. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 213 sufficient to form a belief as to the truth thereof.

214. Admit that Macbeth-Evans Glass Company, before it was consolidated with defendant Corning, was limited in the manufacture of hot mold tumblers to 150,000 gross per annum. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 214 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

215. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 215 sufficient to form a belief as to the truth thereof.

[fol. 487] 216. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 216 sufficient to form a belief as to the truth thereof.

217. Deny each and every allegation contained in paragraph 217.

218. Admit that Hartford has refused to license certain potential producers of glassware seeking to enter the industry. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 218 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

219. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 219 sufficient to form a belief as to the truth thereof.

(Paragraphs 220 to 224 inclusive were omitted from the complaint and consequently we have given no paragraphs those numbers in the Answer).

225. Deny each and every allegation contained in paragraph 225.

226. Deny each and every allegation contained in paragraph 226.

227. Admit that two non-licensees of either Hartford or Owens are being sued for patent infringement by Hartford. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 227 not hereinbefore admitted, sufficient to form a belief as to the truth thereof.

228. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 228 sufficient to form a belief as to the truth thereof.

229. Deny that they have any knowledge or information as to any of the allegations contained in paragraph 229 sufficient to form a belief as to the truth thereof.

[fol. 488] 230. Deny each and every allegation contained in paragraph 230.

Wherefore, defendants demand judgment that plaintiff's complaint be dismissed with costs.

McMahon, Webber & Hayward, Attorneys for Empire Machine Company, Alanson B. Houghton, Amory Houghton, Arthur A. Houghton, Jr., and Alexander D. Falck. By (Sgd.) John M. McMahon, Franklin F. Hayward. Office and Post Office Address, 1333 Nicholas Building, Toledo, Ohio. John Lord O'Brian, of Counsel, 505 Iroquois Building, Buffalo, New York.

[fol. 489] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

JOINT AND SEVERAL ANSWER OF HARTFORD-EMPIRE COMPANY, ET AL.—Filed March 16, 1940

The defendants Hartford-Empire Company (sometimes hereinafter referred to as "Hartford"), F. Goodwin Smith, Bartlett Arkell, Robson D. Brown, John C. Hostetter, Roger

M. Eldred, Karl E. Peiler, Arthur T. Safford, Jr., Theodore L. Champeau, and A. M. Pease, by their attorneys, said defendants being hereinafter referred to collectively as "these defendants," for their answer to the Complaint herein, each answering upon information and belief as to all other of said named defendants, jointly and severally admit, deny and aver as hereinafter set forth.

Answering Generally

These defendants deny that they, or any one or more of them, individually or with one another, or with anyone else, have intended to establish or maintain, or have established or maintained, any conspiracy or monopoly in [fol. 490] restraint of trade or commerce, or have entered into any combination or agreement in restraint of trade or commerce, or have committed, or threaten or intend to commit, any violation of the Sherman Anti-Trust Act or the Clayton Act.

These defendants aver as follows:

A most important factor in the development of the glassware industry as it exists today is the machinery invented and developed by the defendant Hartford-Empire Company and its predecessor, Hartford-Fairmont Company, and the technical and engineering services rendered by Hartford to the industry. There are now more than forty concerns actively and competitively engaged in the automatic manufacture of glass containers of various kinds and other glassware, providing steady employment at good wages for many thousands of men. Over the past twenty years employment in the industry has steadily increased and the quality of glassware has steadily improved, while at the same time its cost to the consuming public, despite substantial advances in wages, has steadily declined. These desirable conditions have resulted directly from the inventions, developments, and use of Hartford-Empire's patented machines and its engineering and other technical services. Except for the wide use of these machines, there would not be the wide and brisk competition in the glassware industry which exists today.

The first fully automatic glassware manufacturing machine was the Owens Suction Machine. It entered the market in 1905 and immediately small manufacturers of bottles and similar glassware were thrown into a precarious position.

Their very existence was threatened, for with their "hand" and semi-automatic methods of manufacture they could not adequately compete with products made cheaper, faster and better by the new Owens machine. That machine domi- [fol. 491] nated the market until 1915, when Hartford's automatic glass feeders went into commercial use, breaking the domination of the Owens machine and supplying the means by which active and adequate competition in those fields of ware made by the Owens machine was provided. From the time Hartford introduced automatic equipment, and down to the present, it has been the means, not of restraining trade and commerce, but of reviving, producing and widening active commercial competition in the glassware industry. It has opened new fields of ware to automatic manufacture. It has enabled the smaller manufacturers not only to continue existence but to grow and to compete adequately and economically with the larger concerns.

Neither Hartford-Empire Company nor these individual defendants establish, control or in any way fix the prices at which glassware is sold. Every glassware manufacturer licensed by Hartford is entirely free to set his prices as he sees fit. So far as Hartford is concerned, Hartford's licensees are free to use any glassware machines not embodying Hartford's inventions, or may use both Hartford's equipment and such other equipment at the same time to meet their production needs.

Hartford-Empire's predecessor, the Hartford-Fairmont Company, was organized in 1912 for the express purpose of carrying on engineering, experimentation and research directed toward the discovery and development of new methods and machinery for the automatic manufacture of glassware. Such developments, enabling manufacturers to produce better ware at lower cost, were imperative to the very competitive life of the industry because of the dominance of the Owens Suction Machine and because of the increased use of glass for food products, demanding containers of greater uniformity in content and strength, available at a price which could compete with containers of other materials without increasing the cost of food products to the public.

[fol. 492] Hartford-Fairmont was a small company with very little capital. Its experiments were carried on with funds supplied by interested glass manufacturers and users; it never attempted to raise money from the public. Through-

out its existence its expenditures for experiments and research exceeded its income, and in 1922 it had a deficit of nearly three-quarters of a million dollars. But it succeeded in perfecting a new method of handling molten glass and the machinery necessary to make that method commercially valuable. The resultant benefit to the public in inestimable.

In 1922, in order to make available for wide commercial use certain methods and developments of others complementary to those of Fairmont, the Hartford-Empire Company was formed. It was, and still is, primarily a research, engineering and service organization directing its efforts through constant experimentation toward the development of new glass compositions and manufacturing methods, and the improvement of those now existing. It does not engage in the commercial manufacture of glassware. It licenses and leases to manufacturers its automatic machines which it makes or has made for it under its supervision, and which are protected by its patents. It maintains a large staff of expert engineers who install such equipment and who furnish, without charge, technical and laboratory service to enable the licensees to produce the best quality of glassware at the lowest possible cost.

Hartford has been of special aid to small manufacturers who previously used "hand" or semi-automatic equipment. Its equipment, technical service and engineering service have enabled numerous smaller concerns to continue in business and successfully compete with the larger glassware manufacturers. No small manufacturer could afford to maintain an adequate research and engineering staff which would give it the service it receives from Hartford.

In the course of Hartford's technical and business history, it has encountered from time to time various patent difficulties which have required Hartford to take action [fol. 493] to protect its rights and the rights of its licensees. In some instances it has made agreements with other companies, such as cross-licensing agreements. In other instances patent litigation has been necessary.

The cross-licensing arrangements referred to in the Complaint which Hartford has made in connection with patents and applications have been either agreements of defensive character, or agreements in the nature of insurance to make certain that Hartford and its licensees could remain in business and be free from infringement suits under patents of others, or to eliminate long and expensive inter-

ference proceedings in the Patent Office, or to obtain for Hartford, and hence for its licensees, the improvements and inventions of the technical and engineering forces of large concerns.

Thus the 1916 agreement between Hartford-Fairmont Company and the Empire Machine Company was made to free Hartford-Fairmont Company from the burden of interference proceedings in the Patent Office. The 1922 agreement between Hartford-Fairmont Company, Empire Machine Company and Corning Glass Works permitted Hartford to get the benefit of the technical development of the large and outstanding research organization of the Corning Glass Works.

The 1924 agreement between The Owens Bottle Company and Hartford-Empire Company was entered into in order to protect Hartford and its licensees from being placed in a position where they might be put out of business. A suit had been brought by The Owens Bottle Company under certain Lott patents and a second suit by the Hazel-Atlas Glass Company and The Owens Bottle Company under certain Brookfield patents. Had Owens prevailed in these suits, the licensed manufacturers might have been denied use of the Hartford machines, and both they and Hartford might have been subjected to infringement damages. Hart- [fol. 494] ford's lawyers advised settling the suits, believing the risk too great. This settlement insured Hartford and its licensees against the dangers of conflicting against the Lott and Brookfield patents.

The agreement in 1922 with the Howard Automatic Glass Feeder Company, and the agreements in 1925 with the Miller Glass Engineering Company and William J. Miller, and with Tucker, Reeves & Beatty, were made to settle an enormous number of Patent Office interferences in which Hartford was involved. They permitted Hartford to have its applications released from interferences, and thereby obtain its patents which had been held up in the Patent Office by interfering applicants. These agreements were effective protective measures for Hartford and for the manufacturers using its machines.

The 1932 agreement between Hartford-Empire Company and the Hazel-Atlas Glass Company was made for the purpose of settling pending controversies between Hazel-Atlas Glass Company, Hartford-Empire Company and the Owens Illinois Glass Company, including the then pending litiga-

tion between Hartford-Empire Company and the Hazel-Atlas Glass Company, for the purpose of licensing Hazel-Atlas Glass Company under Hartford patents, and for the further purpose of obtaining for Hartford and its licensees the benefits of Hazel-Atlas' engineering experience and research facilities.

The 1932 agreements between Hartford and Owens-Illinois Glass Company canceled their 1924 agreement and provided terms more desirable for Hartford, in order to enable Hartford to settle the existing controversies with Hazel-Atlas, including the litigation then pending.

The 1935 agreement between Hartford and Owens canceled all prior contracts between them, substituted a cash payments by Hartford for the annual payment to which Owens had theretofore been entitled, continued for all of Hartford's other licensees the benefits of the Owens licensed inventions under a non-exclusive license from [fol. 495] Owens to Hartford, and continued Owens' non-exclusive license rights from Hartford, for which Owens continued to pay Hartford's standard royalties.

The Headley & Thompson applications, which were purchased from Whitall Tatum Company, contained claims covering Hartford forming machines and forming machines other than Hartford's used by Hartford's licensees. If such applications had not been purchased, Hartford's licensees and Hartford would have been faced with long and expensive litigation. This litigation, if successful, would have been very serious for Hartford and for its licensees.

The Lynch Corporation had applications that had been in interference in the Patent Office with the aforesaid Headley & Thompson applications. After bitterly contested proceedings, priority was awarded by the Board of Appeals of the Patent Office to Headley & Thompson. When the Headley & Thompson applications were acquired by Hartford, Lynch was given a license which enabled it to continue in business as a competitor of Hartford.

None of these agreements, or any other agreement that Hartford entered into, was made for the purpose of suppressing competition.

The Hartford-Empire Company has never carried on a campaign of oppressive litigation. All the patent infringement suits brought by Hartford have been brought in good

faith to protect unwarranted trespass upon its patent rights.

When Hartford has refused to grant a license for the use of its patented machinery, it has done so for sound business reasons. Such restrictions and limitations as are included in Hartford's licenses are proper and reasonable. Hartford's licenses and its practice in licensing have not restrained trade or competition. In 1915, when Hartford's automatic glassware-making machinery went into use, more than half of the glass containers produced in the United [fol. 496] States were made on the Owens Suction Machines. To-day less than one-third of all these glass containers are made on the Owens Suction Machines.

Hartford's machines have been supplied to numerous glassware manufacturing concerns, and to-day there are in use over 850 feeders under Hartford licenses, as well as numerous forming machines, lehrs, and sundry varieties of auxiliary equipment.

Hartford's contribution to the glass industry has been a most substantial one. By its invention of a new manufacturing method, by the development of new machinery making that method commercially usable, and by bringing that method and that machinery to the industry at the very time when the existing dominant automatic machinery was stifling the smaller concerns, Hartford has stimulated, widened and sustained competition. As a result, employment has been kept constant and the productive capacity of the industry has always been maintained at a point far above the consumers' demand, thus again increasing competition. And the public now has highly improved glassware of infinite variety at unprecedentedly low costs.

[fol. 497] Answering Specifically

The following paragraphs of this Answer are numbered to correspond with the numbering of the paragraphs of the Complaint. The several paragraphs of the Complaint which have been supplemented by plaintiff's Bills of Particulars are answered as so supplemented.

1. These defendants admit that plaintiff, by this Complaint and by these proceedings, seeks to invoke the provisions of Section 4 of the Sherman Antitrust Act and Section 15 of the Clayton Act, as amended, to prevent al-

leged violations of Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act; but they deny that they, or any of them, either jointly or severally, have committed, or threaten or intend to commit, any such violation.

2. These defendants admit that certain of the defendants, not including the defendant Hartford-Empire Company or any of these individual defendants, conduct business and are found within the Western Division of the Northern District of Ohio; and admit that interstate trade and commerce involved in the glass industry are carried on in part within said District and Division; deny that they, or any of them, either jointly or severally, have committed, or threaten or intend to commit, any unlawful act or violation, or have engaged, or threaten or intend to engage, in any unlawful conspiracy, monopoly, attempt to monopolize, combination or agreement in restraint of trade and commerce; and, except as hereinbefore admitted, deny the allegations of Paragraph 2.

3. These defendants admit that the defendant Hartford-Empire Company is a Delaware corporation organized in 1922, with a principal office in Hartford, Connecticut, and that it succeeded to the assets of its predecessor, Hartford-Fairmont Company; admit that said Hartford-Empire Company, among other activities, leases and licenses machinery for the manufacture of glassware, and does not [fol. 498] itself commercially manufacture glassware; deny the allegations of Paragraph 3 except as hereinbefore admitted; aver that said defendant Hartford-Empire Company is not a "patent holding company" as alleged in Paragraph 3, but on the contrary, is actually and primarily a research and engineering company, which devises and perfects improved glass-working machinery, equipment and processes, acquires patents principally as a result of its research and engineering activities, and manufactures, and has manufactured for it, machinery and equipment developed by its research and engineering staff and leases and licenses such machinery, equipment and processes to glassware manufacturers; aver further that said defendant Hartford installs such machinery and equipment, and furnishes, without charge, technical service and laboratory service in connection with the operation and maintenance of such machinery and equipment and in connection with all

phases of its licensees' manufacturing operations, including cost analyses and cost control; and aver further that said defendant Hartford directly manufactures some of its glass-making machinery and parts thereof, that it prepares complete drawings and specifications for all its glass-making machinery, and that its employees directly supervise and control the construction, assembling and testing of such of its glass-making machinery as is built with facilities owned by others.

4. These defendants admit, upon information and belief, the allegations of the first two sentences of Paragraph 4 as to the organization and successorship of the defendant Corning Glass Works; admit that said Corning Glass Works has its principal office at Corning, New York, and is a large manufacturer and distributor of the kinds of glassware specified in said Paragraph 4; and state that they are without knowledge or information sufficient to form a belief as to the truth of the other allegations of said Paragraph 4.

[fol. 499] 5. These defendants admit, on information and belief, that the defendant Empire Machine Company is a Maine corporation organized in 1909; admit that said Empire Machine Company owns over 40% of the stock of the defendant Hartford-Empire Company; and state that they are without knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraph 5.

6. These defendants admit that the individual defendants Alanson B. Houghton, Amory Houghton, Arthur A. Houghton, Jr. and Alexander D. Falck have been for various times, and now are, directors of the defendant Hartford-Empire Company, and that said individual defendant Alexander D. Falck is an officer of said defendant Hartford-Empire Company; and state that they are without knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraph 6.

7. These defendants admit, on information and belief, that the defendant Owens-Illinois Glass Company is an Ohio corporation with its principal office at Toledo, Ohio, and is the largest manufacturer and distributor of glass containers and other glassware in the United States, and is the second largest manufacturer and distributor of glass

milk bottles in the United States; and state that they are without knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraph 7.

8. These defendants admit, on information and belief, that the defendant Hazel-Atlas Glass Company is a West Virginia corporation with its principal office at Wheeling, West Virginia, and is the second largest manufacturer and distributor of glass containers and other glassware in the United States; and state that they are without knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraph 8.

9. These defendants admit, on information and belief, that the defendant Thatcher Manufacturing Company is a [fol. 500] New York corporation with its principal office at Elmira, New York, and is the largest manufacturer and distributor of glass milk bottles in the United States; and state that they are without knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraph 9.

10. These defendants admit, on information and belief, that the defendant Lynch Corporation is an Indiana corporation with its principal office at Anderson, Indiana, and is a large manufacturer of certain types of glassware forming machines; and state that they are without knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraph 10.

11. These defendants admit, on information and belief, that the defendant Anchor Hocking Glass Corporation is a Delaware corporation with a principal office at Lancaster, Ohio, and is a large manufacturer and distributor of glass containers and other glassware; and state that they are without knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraph 11.

12. These defendants deny that the group designated in said Paragraph 12 as "the Levis Group" has been "actively interested in the management of" the defendant Hartford-Empire Company; deny that the so-called "Levis Group" has been "directly or indirectly represented on the board of directors of" the defendant Hartford-Empire Company; and state that they are without knowledge or

information sufficient to form a belief as to the truth of the other allegations of Paragraph 12 of the Complaint as supplemented by plaintiff's particulars.

13. These defendants admit, on information and belief, that the defendant Liberty Glass Company is an Oklahoma corporation with its principal office at Sapulpa, Oklahoma, and is a large manufacturer and distributor of glass milk [fol. 501] bottles; and state that they are without knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraph 13.

14. These defendants admit, on information and belief, that the defendant Ball Brothers Company is an Indiana corporation with its principal office at Muncie, Indiana, and is the largest manufacturer and distributor of domestic fruit jars in the United States; and state that they are without knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraph 14.

15. These defendants admit, upon information and belief, that defendant Glass Container Association of America, Inc., is a Delaware corporation having an office at New York, New York, and that the defendants Owens, Hazel-Atlas, Thatcher, Liberty, Anchor Hocking and Ball Brothers have been for some time, and now are, members of said Association; and state that they are without knowledge or information sufficient to form a belief as to the other allegations of Paragraph 15.

16. These defendants admit, upon information and belief, that the defendant Charles R. Stevenson is the Business Manager of the defendant Glass Container Association and that the defendant Emory G. Ackerman is the Assistant Business Manager of the defendant Glass Container Association; and state that they are without knowledge or information sufficient to form a belief as to the other allegations of Paragraph 16.

17. These defendants admit that the individual defendants named in Paragraph 17 have been for various times, and are, officers and/or directors of the defendant Hartford; admit that each of said individual defendants has participated and participates in the direction and management of defendant Hartford, but only to the extent of per- [fol. 502] forming various official acts, within his authority

as such officer and/or director, since he individually became an officer or director of said defendant Hartford; and admit that said individual defendants, or some of them, as officers and/or directors of defendant Hartford and not otherwise, have approved, authorized, ordered and done some, but not all, of the acts alleged in the Complaint to have been performed by defendant Hartford as admitted in this Answer; and deny that any of the said acts were in any manner unlawful.

18 to 26, inclusive. These defendants admit, upon information and belief, that some of the individual defendants named in said paragraphs as officers or directors of the corporate defendants Corning, Empire, Owens, Hazel-Atlas, Thatcher, Lynch, Liberty Glass, Anchor Hocking and Ball Brothers, respectively, have purported to act as officers or directors of said respective corporate defendants; and state that, except as hereinbefore admitted, they are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 18 to 26, inclusive.

27. Upon information and belief, these defendants deny the allegation of Paragraph 27 of the Complaint; and aver, upon information and belief, that some, but not all, of the corporate defendants are engaged in trade and commerce between and among the several States of the United States.

28. These defendants admit that some of the machinery and glassware referred to in the Complaint is shipped and distributed through the channels of interstate trade and commerce; and deny that all of such machinery and glassware is so shipped and distributed.

[fol. 503] Alleged "Description and Early History of Glassware Industry"

29. These defendants deny that, for the purpose of this Complaint or for any other purpose, the glassware industry may be divided into two divisions—glass container and pressed and blown glassware, for the reason that the alleged divisions do not exclude each other, the classification of glassware as "glass containers" being based upon the use to which the glassware is put, and the classification of "pressed and blown glassware" being based upon the method by which the glassware is made; aver that a large

percentage of all glass containers, particularly packers' jars and milk bottles, are "pressed and blown glassware" and are so recognized in the industry; and deny the other allegations of Paragraph 29 as being based upon an erroneous classification.

30. These defendants admit, upon information and belief, that, prior to 1905, glassware was made by hand or by semi-automatic machinery in the United States, and that, in or about 1905 and thereafter, the glassware industry, so far as it related to the manufacture of bottles and other blown glassware, was revolutionized by an automatic suction-fed machine principally invented by Michael J. Owens, who was associated with the predecessor of the defendant Owens; deny that, subsequent to 1905, the methods of glassware production improved to such an extent that no manufacturer could commercially engage in the business of producing glassware unless automatic machinery was used; admit on information and belief, that Owens owned rights under important patents and inventions for the manufacture of glassware by what is known as the "suction method" and that it furnished patented machinery for such manufacture to other manufacturers of glassware under patent license agreements which specified the type of glass containers which could be manufactured by such [fol. 504] licensees, and that royalties were paid by the licensees to Owens under such agreements; and state that they are without knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraph 30.

31. These defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 31.

32. These defendants admit that Hartford-Fairmont Company, the predecessor of defendant Hartford, was organized prior to 1916, to wit, in 1912, and that it developed an invention for an automatic feeder for use in the production of glassware, and that such feeders were used in competition with the then existing Owens suction machines; aver that such feeding machines were used also in competition with machines other than said Owens suction machines; aver that said Hartford-Fairmont Company not merely "developed an invention," but developed, through lengthy

research and experimentation, and at great expense, many types of machines embodying many inventions, which resulted in great benefit to the glassware industry, in great benefit to the public, and in widened competition in the industry; deny that said Hartford-Fairmont Company was organized merely or principally for the purpose of acquiring patents; aver that said Hartford-Fairmont Company was organized for the purpose of developing improved machinery and methods and making such improved machinery and methods available to glassware manufacturers, so as to enable them to manufacture cheaper and better glassware; aver that, in the course of such developments, the engineers employed by said Hartford-Fairmont Company made inventions on which patent applications were filed, and on which patents were later issued; aver that said Hartford-Fairmont Company acquired by purchase certain other patents and patent rights in order to be free to de- [fol. 505] velop and market its machines without infringement, in order to protect its licensees from liability for infringement, and in order to hasten the issuance of patents to which it was lawfully entitled; and, except as hereinbefore admitted, deny the allegations of Paragraph 32.

33. These defendants

(a) admit that since 1916 one commercial method, but not the only one, for manufacturing glassware has included the operations stated in Paragraph 33(a); and state that they are without knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraph 33(a);

(b) admit that some glass-container-making machines are fed by suction and that others are fed by what is sometimes called by the indefinite expression "gob feeding"; admit that one variety (among others) of "gob feeding" is correctly described in lines 15 to 20 of Paragraph 33(b), and that this particular variety of "gob feeding" is controlled by Hartford to the extent of being covered by duly granted and unexpired patents owned by Hartford; aver that non-suction machines may be, and are, fed also by other means, some of which are now, and have been for many years, free for use by the public; deny that since 1916 Hartford has claimed control of the gob-feeding method except to the extent that certain gob-feeding

features are covered by certain of its patents, some of which have been held valid and infringed by decisions of Circuit Courts of Appeals in vigorously contested litigation; admit that one kind (among others) of suction machine is correctly described, in part, in lines 20 to 25 of Paragraph 33(b); deny that Hartford and Owens control and dominate all competing patents and processes relating to gob feeding [fol. 506] in the manufacture of glassware; deny that Owens claims control of the suction process or has so claimed or has been entitled to so claim for several years last past; and deny the allegations of Paragraph 33(b), as supplemented by plaintiff's particulars, except as hereinbefore admitted or admitted in paragraphs of this Answer corresponding to paragraphs of the Complaint referred to in plaintiff's particulars;

(c) admit that in one of the suction processes, the molten glass is sucked directly into molds; admit that in one of the gob-feeding processes, the molds into which the molten glass is delivered are parts of a machine known as a former; admit that until recently (and at present as well), there were (and are) several different types of forming machinery manufactured and sold by companies independent of one another and having no connection with Hartford or Lynch; deny that defendants Hartford and Lynch control and dominate the manufacture of forming machines; and deny the allegations of Paragraph 33(c), as supplemented by plaintiff's particulars, except as hereinbefore admitted or admitted in paragraphs of this Answer corresponding to paragraphs of the Complaint referred to in plaintiff's particulars;

(d) admit that after glassware leaves a forming machine, it is sometimes annealed to prevent the ware from cracking or breaking; admit that the annealing process is sometimes, but not always, carried out by the means described in Paragraph 33(d); deny that defendant Hartford at the present time controls and dominates the manufacture of lehr equipment; and deny the allegations of Paragraph 33(d), as supplemented by plaintiff's particulars, except as hereinbefore admitted or admitted in paragraphs of this Answer corresponding to paragraphs of the Complaint referred to in plaintiff's particulars.

[fol. 507] Further answering, these defendants deny that Hartford and Owens have formed or carried out any com-

bination or conspiracy or have restrained trade or commerce either in connection with patents and processes relating to gob feeding in the manufacture of glassware or in connection with the manufacture of forming machines or in connection with lehr equipment, or in any other manner or connection whatsoever.

Alleged "Offenses Charged"

34. These defendants deny every allegation of Paragraph 34; and deny every allegation of plaintiff's particulars relating to said Paragraph 34 except as may be admitted in paragraphs of this Answer corresponding to paragraphs of the Complaint referred to in plaintiff's said particulars.

Alleged "Formation and Continuation of the Conspiracy"

35, 36, 37, 38. These defendants deny every allegation of Paragraphs 35, 36, 37 and 38 of the Complaint as supplemented by plaintiff's particulars.

Alleged "Hartford-Corning Agreements of 1916 and 1922"

39. These defendants deny every allegation of Paragraph 39 as pleaded; and aver that, not prior to 1916 but in 1916, the United States Commissioner of Patents declared interferences between claims of patent applications belonging to Empire and claims of patent applications belonging to Hartford-Fairmont Company, and that patent interference proceedings were imminent.

40. These defendants deny every allegation of Paragraph 40; and aver that negotiations took place between Hartford-Fairmont and Empire, after the Commissioner of Patents [fol. 508] had declared interferences in 1916, as averred in Paragraph 39 hereof, and prior to June 30, 1916.

41. These defendants admit that, under date of June 30, 1916, Hartford-Fairmont and defendant Empire Machine entered into an agreement with reference to certain patent rights and with reference to the so-called Hartford Paddle Feeder; and that each of said parties to said agreement granted to the other the rights set out in said agreement, to which reference is made for a full and accurate statement of its contents; and, except as hereinbefore admitted, deny the allegations of Paragraph 41.

42. These defendants admit that under date of October 6, 1922, Hartford-Fairmont, defendant Empire Machine and the individuals named in said Paragraph 42 entered into an agreement known as the "Agreement for Formation of Hartford-Empire Company", to which reference is made for a full and accurate statement of its contents; admit that under this Agreement defendant Hartford was organized and had transferred to it all of the assets of Hartford-Fairmont and certain of the assets of Empire Machine, including all of Empire Machine's patents and inventions in connection with machinery for use in the production of glassware; and admit that Hartford issued to Empire Machine 40.5% of its authorized common stock, the balance of the issued common stock of Hartford being held by the former stockholders of Hartford-Fairmont; and, except as hereinbefore admitted, deny the allegations of Paragraph 42.

43. These defendants admit the allegations of Paragraph 43.

44. These defendants deny the allegations of Paragraph 44 as pleaded; and aver that under the Agreement referred to in Paragraph 43 of the Complaint, the Corning glassware field that was specified in the June 30, 1916 agreement referred to in Paragraph 41 hereof was extended and more [fol. 509] fully defined; and that Hartford granted Corning certain exclusive rights which were limited to certain fields of glassware and were also limited to certain kinds of machinery, methods and patents, and Corning and Empire granted to Hartford certain exclusive rights which were likewise limited to certain fields of glassware and limited to certain kinds of machinery, methods and patents, all as set out in said Agreement to which reference is made for a full and accurate statement of its contents; and deny that the rights granted under said Agreement or the fields of glassware, machinery, methods and patents involved therein, are correctly stated in Paragraph 44.

45. These defendants deny the allegations of Paragraph 45 as pleaded, and aver as follows: That subsequent to 1916, and up to the present time, Hartford (or its predecessor Hartford-Fairmont) has issued leases and/or licenses to many manufacturers of glassware to use specified machinery, methods and/or patent rights of Hartford in the production of different types of glassware, including

many types of pressed and blown glassware; that, however, so far as Hartford is concerned, all licensees of Hartford were and are free to use, in the production of all kinds of glassware, any and all machinery and methods not covered by patents of Hartford; that no licensee of Hartford, other than Corning, is licensed by Hartford to use machinery covered by Hartford feeding patents in the manufacture of glassware of the kinds for which Corning holds an exclusive license under certain Hartford patents through the "Agreement Relating to Patent Rights and Formulas" referred to in Paragraph 43 of the Complaint, including electric lamp bulbs and certain kinds of heat-resisting glassware; and that Corning has no exclusive rights whatever in many kinds of Hartford glassworking equipment, inventions and patents.

46. These defendants admit that subsequent to 1922 and between 1929 and 1931, in connection with a proposed revision of the agreement of October 6, 1922, mentioned in Para- [fol. 510] graph 43 of the Complaint, Corning asked Hartford that the proposed revised contract give to Corning a right to use Hartford patented machines in the manufacture of containers from ordinary glass, but because Corning and Hartford failed to agree upon mutually satisfactory terms, the revision was never carried out; and, except as hereinbefore admitted, deny the allegations of Paragraph 46.

47. Upon information and belief, these defendants admit the allegations of Paragraph 47 of the Complaint.

48. These defendants admit, upon information and belief, that defendant Corning granted limited licenses to Fry Glass Company in 1920 and to McKee Glass Company in 1921 under Corning's patents, for the manufacture of heat-resisting glassware; admit, upon information and belief, that Corning refused to grant licenses under its patents for heat-resisting ware to certain other manufacturers prior to the expiration of said Corning patents; deny, on information and belief, that Corning refused to grant any such licenses under its patents after the expiration of such patents; deny that it is or has been the policy of defendant Hartford to refuse to permit any of its licenses to manufacture heat-resisting ware on Hartford machines; aver that any such refusals have been required by Hartford's contract obligations and not by any reason of policy; aver

that in the Hartford-Corning Agreement of 1922, Hartford granted to Corning an exclusive license to use Hartford's feeding and forming machine inventions in the manufacture of certain kinds of heat-resisting ware, all as defined in said agreement; aver that a majority of all heat-resisting glassware manufactured in the United States is made by machinery and methods not covered by any patents of Corning or of Hartford; deny that it is or has been the policy of Hartford to refuse to permit any of its licensees to manufacture pressed and blown glassware; aver that many of Hartford's licensees, other than Corning, manufacture [fol. 511] pressed and blown glassware under Hartford's licenses; and, except as hereinbefore admitted, deny the allegations of Paragraph 48.

49. These defendants deny the allegations of Paragraph 49 as pleaded; and aver that in or about 1931, Hartford refused to grant licenses under its patents to McKee Glass Company to permit the use of certain patented glass feeders of Hartford in the manufacture of the kinds of heat-resisting ware defined in Hartford's 1922 Agreement with Corning, for the reason that Hartford had no legal right to grant such licenses; deny that such refusal was "at the request of Corning"; aver that said McKee Glass Company was offered a sub-license by Corning under the patents of Hartford for the manufacture of heat-resisting glassware, as defined in said 1922 Agreement, but that said McKee Glass Company refused said offer; and aver, upon information and belief, that said McKee Glass Company manufactures large quantities of such heat-resisting glassware by means of automatic machinery which, so far as these defendants are aware, is not covered by any patents of Hartford or of Corning.

50. These defendants admit the allegations of Paragraph 50, except that they deny that the refusal to license, referred to in Paragraph 50, was "notwithstanding the expiration of Corning's composition patents"; and aver that the said refusal to license had no relation to the expiration or non-expiration of any Corning patents.

51. These defendants deny the allegations of Paragraph 51 as pleaded and as supplemented by plaintiff's particulars; and aver that in 1937, Hocking Glass Company (not defendant Anchor Hocking) took up with defendant Hart-

ford and with defendant Corning the acquisition by said Hocking Glass Company of the right to use, for the manufacture of certain heat-resisting glassware, certain patented Hartford machines, the use of which for making such heat-[fol. 512] resisting glassware was then exclusively licensed by Hartford to Corning; that Corning refused to grant such right; that neither Anchor Hocking nor said Hocking Glass Company, at the request of defendants Corning, Hartford and Owens, or any of them, have ever agreed orally or in writing with defendants Corning, Hartford and Owens, or any of them, not to engage in the business of manufacturing heat-resisting ware without first obtaining the consent of defendant Corning; and that C. B. Belknap never represented or purported to represent defendants Corning or Hartford as alleged in plaintiff's particulars; aver, upon information and belief, that no request was made to said Hocking Glass Company or to Anchor Hocking, as to any manufacture of heat-resisting glassware by methods or machines not covered by patents of Hartford and which were not then exclusively licensed to Corning by Hartford for the manufacture of such heat-resisting glassware; and state that they are without knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraph 51.

52. These defendants deny every allegation of Paragraph 52.

Alleged "Hartford-Owens Relations"

53. These defendants admit, on information and belief, the allegations of the first three sentences of Paragraph 53; and state that they are without knowledge or information sufficient to form a belief as to the truth of the other allegations of said Paragraph 53.

54. These defendants admit that, in 1915, Hartford-Fairmont put on the market a glass feeder and thereafter licensed various glassware manufacturers at rentals and production royalties usually less than those charged by Owens; aver that the glass feeders put on the market by Hartford-Fairmont were not solely "glass container feeder [fol. 513] machines" but were also adapted to, and were used in, the manufacture of glassware generally; deny that the royalty or rental payments were percentage payments and aver that they were payments of specified amounts of

money per gross for specified sizes, weights, and types of ware; admit that the initial license fee on the feeder covered by the Hartford-Fairmont patents was less than initial license fee on the Owens machine and that the Hartford feeder was less expensive to operate than the Owens machine; admit that various licensees of Owens acquired feeder licenses or unit feeder and forming machine licenses from Hartford-Fairmont and that Owens thereafter experienced greater competition in the manufacture of glass containers; and, except as hereinbefore admitted, they deny the allegations of Paragraph 54.

55. These defendants deny the allegations of Paragraph 55 as pleaded; aver, upon information and belief, that Owens, in and after 1916, acquired certain patent rights on glass feeding machinery; and in 1916 purchased the Graham Glass Company, which owned certain glass feeder patent rights; and in 1918 acquired an option to purchase the Lott feeder inventions, on which applications for patents were then pending; and in 1921 obtained a license from Hazel-Atlas under its Brookfield patents on feeding devices, which license was exclusive for certain fields of ware; and also owned the Bock patent on feeding and forming machinery; and one of its inventors, Soubier, filed several applications for patents covering glass feeding devices.

56. These defendants admit that in 1919 defendant Peiler filed additional applications for patents on improvements in glass feeding; aver that defendant Peiler filed still other patent applications on glass feeding inventions and other inventions relating to glassware manufacture both before and after the year 1919; admit that Hartford-Fairmont (and Hartford-Empire) purchased feeder patent rights [fol. 514] from the Howard Automatic Glass Feeder Company; aver that such purchase was made in 1922 and not in 1921; deny that defendant Hartford-Empire Company sued the Berney-Bond Glass Company in 1923 or at any other time; aver that Hartford-Fairmont Company, predecessor of the defendant Hartford-Empire Company, brought a patent infringement suit against said Berney-Bond Glass Company early in 1920; deny that such suit was brought "in order to compel the Howard licensees to submit to the royalty rates and restrictions of a Hartford license agree-

ment" as alleged; aver that said suit was brought to restrain infringement of patents owned by said Hartford-Fairmont Company; admit that said suit was settled; admit that said Berney-Bond Company was granted a license by defendant Hartford-Empire Company; admit that the six other Howard licensees named in Paragraph 56 were also granted licenses by defendant Hartford-Empire Company; and, except as hereinbefore admitted, deny the allegations of Paragraph 56.

57. These defendants deny the allegations of Paragraph 57, as pleaded; and aver that in 1919 (not 1918), Owens offered to purchase some, but not all, of Hartford-Fairmont's assets for $2,000,000, and that this offer was refused.

58. These defendants deny the allegations of Paragraph 58, as pleaded; and aver that in 1923 two suits were brought against J. T. & A. Hamilton Company, a Hartford licensee; aver that one of said suits was brought by Owens, alleging that Hartford's glass feeders, then used by the said Hamilton Company, infringed certain Lott patents owned by Owens; and aver that the other suit was brought by Owens and Hazel-Atlas, alleging that said Hartford feeders infringed certain Brookfield patents owned by Hazel-Atlas, in which Owens had certain exclusive rights.

[fol. 515] 59. These defendants deny the allegations of Paragraph 59 as pleaded; and aver that early in 1920, Hartford-Fairmont Company sued the United States Glass Company for infringement of patents owned by said Hartford-Fairmont Company, including two Hitchcock patents issued in 1905 and expiring in 1922; and that in 1923, it was decided in this suit that the said Hitchcock patents were not infringed by the Miller feeders used by said United States Glass Company.

"Owens-Hartford 1924 Agreement"

60. These defendants admit that there were negotiations between Owens and Hartford (and its predecessor Hartford-Fairmont) at various times extending over a period of several years prior to April 9, 1924; aver that such negotiations were intermittent and were several times definitely broken off; admit that there were serious conflicts and disputes between Owens and Hartford as to patents and in-

ventions relating to glass feeders; aver that said conflicts and disputes included both patent infringement suits and Patent Office interferences; and, except as hereinbefore admitted, deny the allegations of Paragraph 60.

61. These defendants deny every allegation of Paragraph 61 of the Complaint.

62, 63. These defendants admit that, on or about April 9, 1924, Hartford and Owens, and others, entered into an agreement entitled "General License Agreement"; deny that the provisions of said agreement are correctly stated or summarized in said Paragraphs 62 and 63, and refer to said agreement for a full and accurate statement of its contents; deny all allegations of said Paragraphs 62 and 63 except the execution of said agreement as hereinbefore admitted; and aver that said agreement was canceled on or about July 1, 1932 and has not been in force or effect since that date.

[fol. 516] 64, 65. These defendants deny every allegation of Paragraphs 64 and 65 of the Complaint.

66. These defendants deny the allegations of Paragraph 66 as pleaded; and aver that, during the period from April, 1924 until September 30, 1935, the amounts paid by Hartford to Owens under the 1924 agreement and under the 1932 agreement substantially exceeded the royalties paid by Owens to Hartford.

67. These defendants admit that under the 1924 agreement, Hartford and Owens agreed to prosecute vigorously infringement of their respective patents; aver that the said agreement to prosecute infringements of patents was limited to patents on Licensed Inventions as defined in said 1924 agreement; and, except as hereinbefore admitted, deny the allegations of Paragraph 67.

68. These defendants deny the allegations of Paragraph 68 as pleaded; and refer to Section 21, as amended, of the 1924 agreement between Hartford and Owens for a full and accurate statement of the provisions of said agreement purported to be recited in said Paragraph 68.

69. These defendants deny every allegation of Paragraph 69 as pleaded; and aver that, under the 1924 agreement, Owens granted no right to Hartford to grant sub-

licenses for the manufacture of glass containers, under patents licensed to Hartford by Owens and without the consent of Owens, except to manufacturers of the classes stated in Section 22 of said agreement, and also substantially stated in (a) and (b) of said Paragraph 69.

70. These defendants deny every allegation of Paragraph 70 of the Complaint.

[fol. 517] Alleged "Patent Litigation and Acquisitions Resulting in Elimination of Competition—1924 to 1932"

71. These defendants deny every allegation of Paragraph 71 of the Complaint.

72. These defendants admit that, at the time of the making of the 1924 agreement, there were a number of companies, in no way connected with Hartford or with Owens, engaged in the business of manufacturing and distributing glass-making machinery; admit that there were also numerous manufacturers of glassware using glass-making machinery not furnished or licensed by Hartford or by Owens; aver that many of such manufacturers made and/or used glass-making machinery which trespassed upon patent rights of Hartford and of Owens; aver that Owens and Hartford sought to induce infringers of Owens and Hartford patents to take licenses and pay royalties or desist from infringement; and deny the allegations of Paragraph 72 as supplemented by plaintiff's particulars, except as hereinbefore admitted, or admitted in paragraphs of this Answer corresponding to paragraphs of the Complaint referred to in plaintiff's particulars.

73. These defendants deny the allegations of Paragraph 73 as pleaded; and aver that Hartford took an appeal from the decision in the suit which its predecessor Hartford-Fairmont Company had brought against United States Glass Company (referred to in Paragraph 59 hereof) holding that certain claims of certain Hitchcock patents were not infringed; that said appeal was not prosecuted to a decision; and that Hartford thus abandoned no rights except against the defendant in said suit with respect to the claims in suit and the alleged infringement thereof.

74. These defendants deny the allegations of Paragraph 74 as pleaded; and aver that, after the 1924 agreement had

been made between Hartford and Owens, Hartford and its licensee J. T. & A. Hamilton Company entered into a con-
[fol. 518] sent decree in one only of the two Owens suits instituted in 1923 against said Hamilton Company, namely, the suit involving the Lott patents owned by Owens (referred to in Paragraph 58 hereof) wherein Hartford and Hamilton admitted the validity of the Lott patents in suit; that no decree was entered in the suit involving the Brookfield patents; and that neither Hartford nor Hamilton admitted the validity of said Brookfield patents.

75. These defendants admit the allegations of Paragraph 75; and aver that Hartford and Owens purchased the Sears and Lobb applications referred to in Paragraph 75 because they contained claims covering certain features of forming machines of Hartford and certain features of forming machines of Owens.

76. These defendants admit the allegations of Paragraph 76; and aver that Hartford and Owens acquired the options on the Headley and Thompson patent applications referred to in Paragraph 76 (which applications were in Patent Office interferences with Hartford and with Owens) because said applications contained claims covering forming machines being used by Owens, forming machines being put out on license and lease by Hartford, and numerous other forming machines employed by Hartford's licensees, and therefore constituted a serious menace to Hartford, Owens and Hartford's other licensees.

77. These defendants deny the allegations of Paragraph 77 as pleaded; but aver that in February, 1925, Owens sued Miller Glass Engineering Company and William J. Miller, claiming that the Miller feeder infringed two Lott patents owned by Owens; and aver that in July, 1925, said Miller Glass Engineering Company sold to Hartford a license under one glass feeder patent and, also in July, 1925, said William J. Miller (not the Miller Company) sold to Hartford certain glass feeder patents and certain glass feeder
[fol. 519] patent applications, some of which were then involved in numerous Patent Office interferences with applications of Hartford and with applications of Owens, all for the approximate sum of $145,000; that said Patent Office interferences had then been delaying, for many years, the issue of important patents to which Hartford was lawfully

entitled, and would have delayed the issue of such patents for many more years if the said transactions with Miller had not taken place; that, therefore, said transactions were made for the purpose of ending the long and expensive interference proceedings and to hasten the issuance to Hartford of its important patents which were being delayed by such interferences; that Owens and Hartford jointly shared the expenses of the acquisition of said patent rights, in accordance with the provisions of Section 21 of the Hartford-Owens agreement of 1924, but that Hartford did not share the expense of said litigation; and that said suit was eventually dismissed.

78. These defendants deny the allegations of Paragraph 78 as pleaded; and aver as follows:

In 1926, Hartford, having been granted patents that were infringed by the use of glass feeders of the kind known as "Miller Feeders," brought a suit against the Lamb Glass Company, a user of such Miller feeders, to restrain infringement of such patents. This suit was decided by the Circuit Court of Appeals for the Sixth Circuit in May, 1932, 58 F. (2d) 701, in an opinion holding that said Miller feeder infringed certain of the claims in suit. Prior to said 1932 decision, to wit, in March, 1930, Hartford had instituted another suit against said Lamb Glass Company under a subsequently issued Peiler patent No. 1,655,391, dated January 3, 1928. In May, 1932, a suit on the last-named Peiler patent, *Hartford-Empire Company* v. *Hazel-Atlas Glass Company*, was decided favorably to Hartford by the Third Circuit Court of Appeals (59 F. (2d) 399). Thereafter, in November, 1932, said Lamb Glass Company [fol. 520] took a license from Hartford for the continued use of its Miller feeders, and the two suits against the said Lamb Company were thereupon settled.

Another Miller feeder user, namely, Atlantic Bottle Company, was notified in 1926 by Hartford of infringement of patents involved in the first Lamb Company suit mentioned above. As these defendants are informed and believe, the assets of said Atlantic Bottle Company were acquired by Owens in 1930. No license agreement was ever made between defendant Hartford and said Atlantic Bottle Company.

In 1935, Hartford brought suit against Florida Glass Manufacturing Company, another user of Miller feeders,

and obtained a preliminary injunction restraining the Florida Company from infringing the above-mentioned Peiler patent No. 1,655,391. Thereupon, Florida Glass Manufacturing Company applied for and was given a license from Hartford, permitting the continued use of its Miller feeders, and transferred title to its Miller feeders to Hartford in settlement of damages for its past infringement.

Knox Glass Bottle Company, also a user of Miller feeders, was notified by defendant Hartford in 1926 that its Miller feeders infringed patents of Hartford. In August, 1932, said Knox Glass Bottle Company took a license from Hartford permitting the continued use of its Miller feeders.

Two other users of Miller feeders, namely, Jeannette Glass Company and F. E. Reed Glass Company, refused to recognize Hartford's patent rights and were sued by Hartford. The said suits are still pending.

A portion only of the expenses of the above-identified suits against the Lamb Glass Company and the F. E. Reed Glass Company were shared between Hartford and Owens. None of the expenses of the above-identified suits against the Florida Glass Manufacturing Company and Jeannette Glass Company were so shared. Neither Hartford nor Owens shared the expense of any acquisition by the other alleged in said Paragraph 78.

[fol. 521] 79, 80. These defendants deny the allegations of Paragraphs 79 and 80 as pleaded; and aver as follows:

Prior to December, 1924, and prior to April 9, 1924, the date of the General License Agreement between Hartford and Owens, Hartford and Owens had, separately and competitively, unsuccessfully negotiated for the purchase of the Tucker, Reeves & Beatty patent rights, the most important of which were applications for patents pending in the United States Patent Office. These negotiations were undertaken because, for many years prior to the date of the 1924 agreement between Hartford and Owens, there had been pending in the United States Patent Office a number of bitterly contested interferences involving applications of Hartford, applications of Owens, and applications of Tucker and Reeves owned or controlled by the partnership of Tucker, Reeves & Beatty, which interferences threatened to postpone indefinitely the issue of patents on inventions, properly belonging to Hartford and disclosed in the said

applications of Hartford, under which Owens was licensed under the said 1924 agreement and also threatened to postpone indefinitely the issue of patents on inventions properly belonging to Owens and disclosed in said applications of Owens. The said applications of Hartford were entitled to prevail over the applications of Tucker and Reeves in respect to the broad interfering subject-matter.

Prior to December, 1924, the said firm of Tucker, Reeves & Beatty had served upon Owens, upon Hartford, and upon a licensee of Hartford, Illinois Glass Company, notices claiming that glass feeders of Owens and glass feeders of Hartford used by said Illinois Glass Company infringed two issued patents of Tucker and Reeves.

Before making the 1924 agreement with Hartford, Owens had filed several suits against users of Tucker and Reeves feeders, in which suits Hartford never participated in any way.

In December, 1924, Owens brought suits against Tucker, Reeves & Beatty and against The Federal Glass Company, [fol. 522] a user of Tucker, Reeves and Beatty feeders, for infringement of its Lott patents. Hartford did not share in the expense of said suits.

Tucker, Reeves & Beatty, the firm owning the Tucker and Reeves patent applications, had licensed five glassware manufacturers to use glass feeders constructed and licensed by said firm of Tucker, Reeves & Beatty, namely, Federal Glass Company, Capstan Glass Company, Hart Glass Company, Hemingray Glass Company and Winslow Glass Company. In 1925, after negotiations extending over a considerable period, Hartford acquired the said Tucker and Reeves patents and patent applications, and Owens acquired license rights thereunder. By this transaction, it was made possible to terminate the infringement controversies and the long and expensive Patent Office interference proceedings referred to above, in so far as they involved the said Tucker and Reeves applications, and to bring to issue the patents to which Hartford and Owens were severally entitled, and which had been delayed in the Patent Office by the said interference proceedings.

Hartford and Owens organized Feeder Patents Company in 1925 under the laws of the State of Delaware, Hartford and Owens each owning one-half of the stock of the said Feeder Patents Company and each having two directors in

the said company, and said Feeder Patents Company acquired the licensor's interest in said five Tucker, Reeves & Beatty licenses, but did not acquire the Tucker, Reeves & Beatty feeder patents.

The total consideration paid for the above-identified Tucker, Reeves & Beatty patent rights and licensor's rights was approximately $1,600,000, one-half of which was paid by Hartford and one-half of which was paid by Owens.

Thereafter, the above-identified Tucker, Reeves & Beatty licensees became licensees of Hartford, thus receiving licenses not only under the Tucker and Reeves patent rights, under which they had previously been licensed, but [fol. 523] also under the patent rights of Hartford and of Owens applying to the Tucker and Reeves feeders being used by the said Tucker, Reeves & Beatty licensees.

Long prior to the organization of said Feeder Patents Company, two of the Tucker, Reeves & Beatty licensees, namely, Federal Glass Company and Hart Glass Company, had been sued by Owens for infringement of Owens patents by the use of Tucker and Reeves glass feeders, and, as these defendants are informed and believe, the other three Tucker, Reeves & Beatty licensees, namely Capstan Glass Company, Hemingray Glass Company, and Winslow Glass Company, had been notified by Owens of similar infringement of Owens patents, also long prior to the organization of said Feeder Patents Company.

The assets of said Feeder Patents Company were distributed between Hartford and Owens, and said Feeder Patent Company was legally dissolved April 21, 1934.

81. These defendants deny the allegations of Paragraph 81 as pleaded and as supplemented by plaintiff's particulars; and aver as follows:

In 1926, a suit, involving the Peiler "phrase change" patent No. 1,573,742 and other patents, was brought by Hartford against The Nivison-Weiskopf Company. This suit, along with the first suit against The Lamb Glass Company mentioned in Paragraph 78 hereof, went to final decision by the Circuit Court of Appeals for the Sixth Circuit, the decision in said suits being reported in 58 F. (2d) 701, and holding that certain claims in suit were valid and infringed by the Nivison-Weiskopf feeder. In 1931, General Glass Corporation, a licensee of Hartford, purchased, as

these defendants are informed and believe, a portion of the assets of said The Nivison-Weiskopf Company. Such purchase was not made pursuant to any agreement between General Glass Corporation and Hartford. In 1932 Hartford acquired from said General Glass Corporation certain glass feeder patents and patent applications, on minor im- [fol. 524] provements, which patents and applications had been previously acquired by said General Glass Corporation from The Nivison-Weiskopf Company. Hartford accepted the said patents and patent applications in settlement of damages in said suit, for which damages said General Glass Corporation had assumed liability to Hartford. Owens shared some, but not all, the expense of said litigation against The Nivison-Weiskopf Company, but paid nothing in connection with acquisition of the Nivison-Weiskopf patents.

So far as these defendants are aware, the glass feeder used by said The Nivison-Weiskopf Company, involved in the said suit, was not licensed by said The Nivison-Weiskopf Company to other glassware manufacturers, although these defendants are informed and believe that one or more Nivison-Weiskopf feeders were sold by The Nivison-Weiskopf Company to Rawleigh Glass Company. As these defendants are informed and believe, Rawleigh Glass Company had manufactured no glassware for several years prior to 1936, when Owens informed Hartford that Owens had purchased the glass manufacturing equipment of said Rawleigh Company and, therefore, there was no substantial question of Rawleigh infringement damages in connection with said purchase.

82. These defendants admit that in 1925 there was pending before the United States Patent Office an application by defendant Peiler, upon which the Peiler patent 1,655,391, sometimes called the Peiler "stuffing" patent, was issued to defendant Hartford in 1928; admit that a printed article referred to in Paragraph 82 as the "Clarke article" was published in the July 17, 1926 issue of National Glass Budget, a trade paper, under the signature of William P. Clarke, then President of the American Flint Glass Workers' Union; admit that a representative of Hartford arranged for such publication; admit that a copy of said publication was filed in the Patent Office record of said Peiler application and was referred to in the subsequent proceedings

[fol. 525] therein and in a suit between Hartford and Hazel-Atlas; admit that the opinion of the Circuit Court of Appeals for the Third Circuit in the said suit, namely, *Hartford-Empire Company* v. *Hazel-Atlas Glass Company*, 59 F. (2d) 399, made reference to said "Clarke article"; admit that no circumstances regarding said "Clarke article," prior to its publication in the National Glass Budget, were brought to the attention of the Patent Office or the Circuit Court of Appeals prior to said opinion; aver that a representative of Hartford compiled said article from then-existing official records, principally the proceedings of the labor union concerned with the manufacture of bottles and other glassware; aver that said article was examined for accuracy by various other representatives of Hartford and by representatives of Owens; aver that said William P. Clarke personally checked, verified and corrected the statements in said "Clarke article" and adopted said article as his own after such checking, correcting and verification; aver that every statement contained in said "Clarke article" is true; aver that said "Clarke article" was properly prepared, published, filed and referred to before the Patent Office and before the Courts; aver that the circumstances surrounding the preparation and publication of said "Clarke article" have been extensively and vigorously presented to the Circuit Court of Appeals for the Third Circuit as a ground for rehearing (which was denied) in a later suit on the said Peiler "stuffing" patent; have also been referred to before the Supreme Court of the United States in connection with a petition for certiorari in said later suit, which petition was denied, and have again been extensively and vigorously presented to the United States District Court for the Southern District of Florida in another later suit involving the same Peiler patent, in opposition to Hartford's petition for a preliminary injunction, which injunction was granted; and aver that none of said Courts has found any impropriety whatever in the preparation, publication or use of said "Clarke article," or any [fol. 526] incorrectness whatever in any statement contained in said "Clarke article." Except as hereinbefore admitted, these defendants deny the allegations of Paragraph 82.

83. These defendants admit that Hartford has filed three patent infringement suits against Obear-Nester Glass Com-

pany; admit that one of said suits was begun in 1926; admit that Owens shared a portion only of the expense of two of said suits; deny that Owens shared any expense of the third suit; aver that in the first suit, the Obear-Nester plunger feeder was found to infringe Hartford patents; admit that in the second suit the so-called Stuckey feeder was involved, and that said second suit was determined in favor of Obear-Nester; aver that the third suit was filed after the Eighth Circuit Court of Appeals finally held that the Obear-Nester "air feeders" could not be included in the first suit; state that they are without knowledge or information sufficient to form a belief as to the cost of said litigation to Obear-Nester; and deny every allegation of Paragraph 83 not hereinbefore referred to.

84. These defendants deny the allegations of Paragraph 84 as pleaded; and aver that in 1926 Hartford brought a feeder patent infringement suit (Owens sharing some of the expense) against The Kearns-Gorsuch Bottle Company, a wholly-owned subsidiary of defendant Hazel-Atlas Glass Company; and that Kearns-Gorsuch's feeder was held to infringe Hartford's Peiler "phase-change" patent [58 F. (2d) 701].

85. These defendants state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations that in 1927, O'Neill Suction Machine Company and Knox Glass Bottle Company jointly developed the Knox-O'Neill suction machine; deny all the remaining allegations of Paragraph 85; and aver as follows:

In 1929, Owens brought a patent infringement suit, independently of Hartford and at Owens' sole expense, [fol. 527] against O'Neill Machine Company and Frank O'Neill, claiming that the Knox-O'Neill suction machine infringed certain of its patent rights.

O'Neill Machine Company and Knox Glass Bottle Company, the owners of the Knox-O'Neill suction machine, endeavored to induce Hartford to purchase the United States rights in said Knox-O'Neill machine, but Hartford declined such offer. O'Neill Machine Company thereafter brought a patent infringement suit against Hartford, claiming that certain of Hartford's glassware forming machinery infringed certain of its patent rights. Hartford thereafter brought a patent infringement suit against Carr-Lowrey

Glass Company, claiming that a Knox-O'Neill suction machine used by said Carr-Lowrey Glass Company infringed certain of its patent rights. Said O'Neill suit against Hartford and said Hartford suit against Carr-Lowrey Glass Company were settled by an exchange between the O'Neill and Hartford Companies of non-exclusive licenses under the patents in suit. None of said suits was brought by Hartford or by Owens pursuant to the 1924 agreement between Hartford and Owens.

Hartford, in 1933, purchased certain United States patent rights offered to Hartford by Frank O'Neill. Such patent rights related to glass feeders and to feeder-fed forming machines, and such patent rights were offered to and purchased by Hartford on the representation by O'Neill and the O'Neill company that they desired to wind up their United States business and dispose of the O'Neill company's assets. These defendants are informed and believe that Owens, also in 1933, purchased from said Frank O'Neill and/or from said O'Neill Machine Company, certain United States patent rights relating to suction machines and related apparatus.

Hartford has never threatened the Knox Glass Bottle Company with oppressive litigation or coerced said Knox company in any manner. Hartford has notified said Knox Glass Bottle Company that the Knox-O'Neill suction ma- [fol. 528] chines used by said Knox Glass Bottle Company infringed several patents owned by Hartford. Said Knox Glass Bottle Company thereafter entered into a license agreement with Hartford whereby Hartford licensed said Knox company to continue the use of said Knox-O'Neill machines under the Hartford forming machine patents covering said machines, and said Knox company sold said Knox-O'Neill machines to Hartford.

86. These defendants deny every allegation of Paragraph 86.

87. These defendants deny the allegations of the first sentence of Paragraph 87; aver that, in 1933, defendant Hartford notified Capstan Glass Company that four glass feeders built and used by said Capstan company infringed patents owned by Hartford, and that said Capstan thereafter, in 1934, entered into an agreement by which said Capstan company was licensed to continue to use said feeders and

agreed not to promote infringement by furnishing similar feeders to others; and admit the allegations of the second and third sentences of Paragraph 87, except that they deny that the agreement referred to in the second sentence was an agreement for suppression of the commercial exploitation of the Capstan feeder.

88. These defendants admit that, in 1934, defendant Hartford instituted suit against Swindell Brothers, Inc., claiming that the Amsler-Morton lehrs used by Swindell Brothers infringed Hartford patents; aver that such infringement was found in said suit by the Circuit Court of Appeals for the Fourth Circuit (96 F. [2d] 227 and 99 F. [2] 61); and, except as hereinbefore admitted, deny the allegations of Paragraph 88.

89. These defendants admit that one Claude Nagle developed a lehr for defendant Thatcher; aver that such development occurred while defendant Thatcher was using many [fol. 529] Hartford lehrs; admit that Hartford claimed that said Nagle lehr infringed its patent rights; aver that such claim was well founded, and was so recognized by defendant Thatcher, which was thereupon licensed under Hartford patents to continue to use said Nagle lehrs; and admit that defendant Hartford acquired title to said Nagle lehrs from Thatcher in 1937.

90. These defendants admit that defendant Hartford brought infringement suits against the companies mentioned in the first sentence of Paragraph 90, but deny that said suits, or any of them, were brought pursuant to Hartford's agreement with Owens; admit that Hartford infringement suits are pending against Obear-Nester Glass Company and F. E. Reed Glass Company; and, except as hereinbefore admitted, deny the allegations of Paragraph 90 as supplemented by plaintiff's particulars; except that they admit that Hartford, as part of various settlements with infringers, acquired some, but not all, of the property listed in Paragraph 9 of plaintiff's particulars filed in response to Hartford's motion.

91. These defendants deny every allegation of Paragraph 91 of the Complaint as supplemented by plaintiff's particulars; except that they admit that Hartford filed patent applications substantially as alleged in Paragraph 10(a) of

plaintiff's Hartford particulars; that patent applications of Hartford were involved in the interferences listed in Paragraph 10(c) and (d) of plaintiff's said particulars; aver that said interferences were conducted in strict accordance with the rules of practice of the United States Patent Office and under the control of the Patent Office officials; admit that Hartford's Peiler patent No. 1,655,391 issued on January 3, 1928, and that Hartford's Steimer patent No. 2,073,571 was pending in the United States Patent Office from 1910 to 1937 as stated in Paragraph 10(e) of plaintiff's said particulars; and aver that the delay in issuing said Steimer [fol. 530] patent was not procured by Hartford, but, on the contrary, was occasioned by proceedings beyond Hartford's control and over Hartford's repeated protests.

"February 4, 1931 Amendment to 1924 Agreement Between Hartford and Owens"

92. These defendants admit the allegations of Paragraph 92, except that they deny that the provisions of Section 22 of the April 9, 1924 agreement are correctly summarized in Paragraph 69 of the Complaint; and aver that the entire agreement of April 9, 1924, was canceled on July 1, 1932 and has not since been in force or effect.

93. These defendants deny every allegation of Paragraph 93; aver that the February 4, 1931 amendment to the April 9, 1924 agreement was occasioned in part by the desire to remove from the 1924 agreement a provision, the legality of which might be questioned, and was also occasioned in part by Hartford's repeated objection, for business reasons, to said Section 22, and by Hartford's repeated requests that said Section 22 be amended; and that Hartford gave Owens a large consideration for agreeing to said amendment.

"Hartford, Owens and Hazel-Atlas Agreements, July 1, 1932"

94. These defendants deny every allegation of Paragraph 94 of the Complaint, except that they admit, on information and belief, that Hazel-Atlas is the second largest manufacturer of glass containers in the United States.

95. These defendants deny that pursuant to their 1924 agreement, Hartford and Owens sought to compel Hazel-

Atlas to become a licensee of Hartford; admit that Hartford brought suit in 1926 against The Kearns-Gorsuch Bottle Company, a subsidiary of Hazel-Atlas; admit that Owens shared some of the expense of said suit; admit that [fol. 531] said Kearns-Gorsuch Company was a licensee of Hartford at the beginning of said suit and did not at that time use equipment furnished by Hartford; aver that said Kearns-Gorsuch company ceased to be such licensee before the trial of said suit; admit that Hartford contended in said suit that said Kearns-Gorsuch company, being such licensee, could not successfully attack the validity of the patents in suit; aver that said Kearns-Gorsuch company was in fact permitted to attack the validity of said patents, notwithstanding said license and said contention; admit that Hartford succeeded in sustaining only some of its claims in the suit against Kearns-Gorsuch; aver that the decision of the Circuit Court of Appeals for the Sixth Circuit in said suit is reported in 58 F. (2d) 701; aver further that Hartford filed a petition to the United States Supreme Court for certiorari in said suit, on account of a conflict between decisions of Circuit Courts of Appeals, but that said petition was denied, notwithstanding said conflict; and, except as hereinbefore admitted, deny the allegations of Paragraph 95.

96. These defendants admit the allegations of Paragraph 96 of the Complaint, except the allegation therein as to the cost to Hazel-Atlas of the suit referred to; and state that they are without knowledge or information sufficient to form a belief as to the truth of said excepted allegation.

97. These defendants admit that, after said decisions, Hartford and Owens entered into negotiations with Hazel-Atlas; deny that the allegations of (a), (b), (c) and (d) of said Paragraph 97 correctly set forth the purposes of Hartford and of Owens in entering into said negotiations; and aver that Hartford and Owens entered into said negotiations for the purpose of settling pending controversies, including the then pending patent litigation between Hartford and Hazel-Atlas, and of licensing Hazel-Atlas under their patents; and aver further that in a subsequent suit on the [fol. 532] Peiler patent No. 1,655,391, involved in the suit between Hartford and Hazel-Atlas, three separate petitions to the United States Supreme Court for certiorari were filed by defendant, all of which were denied. *Shawkee Mfg.*

Co. et al. v. *Hartford-Empire Co.*, 292 U. S. 640; 293 U. S. 600; and 296 U. S. 635.

98. These defendants deny the allegations of Paragraph 98 as pleaded; and aver that Hazel-Atlas and Hartford on July 1, 1932 entered into two agreements, one entitled "General License Agreement" and the other entitled "Supplemental Agreement."

99. These defendants admit the allegations of Paragraph 99.

100. These defendants admit the execution of the agreement referred to in Paragraph 100; aver that said paragraph does not correctly set forth the terms and provisions of said agreement, and therefore deny all allegations of Paragraph 100 except the execution of the said agreement as hereinbefore admitted; and refer to said agreement for a full and accurate statement of its contents.

101. These defendants admit that under the Hazel-Atlas and Hartford General License Agreement of July 1, 1932, Hazel-Atlas paid Hartford $1,000,000; admit that under the said agreement Hazel-Atlas agreed to pay rentals or royalties to Hartford on all inventions licensed by the agreement and used by Hazel-Atlas, including Hazel-Atlas inventions licensed to Hartford; aver that the allegations of Paragraph 101 do not correctly set forth the terms and provisions of said agreement, and therefore refer to said agreement of July 1, 1932 for a full and accurate statement of its contents; and, except as hereinbefore admitted, deny the allegations of Paragraph 101.

102. These defendants admit that under the General License Agreement of July 1, 1932 between Hartford and [fol. 533] Owens, the April 9, 1924 agreement between the same parties was canceled; deny that the remaining allegations of Paragraph 102 correctly set forth the terms and provisions of said agreement of July 1, 1932, and therefore deny all allegations of Paragraph 102 except as hereinbefore admitted and refer to said agreement for a full and accurate statement of its contents.

103. These defendants admit the execution of the General License Agreement of July 1, 1932 referred to in Paragraph 103; aver that said Paragraph 103 does not correctly set

Atlas to become a licensee of Hartford; admit that Hartford brought suit in 1926 against The Kearns-Gorsuch Bottle Company, a subsidiary of Hazel-Atlas; admit that Owens shared some of the expense of said suit; admit that [fol. 531] said Kearns-Gorsuch Company was a licensee of Hartford at the beginning of said suit and did not at that time use equipment furnished by Hartford; aver that said Kearns-Gorsuch company ceased to be such licensee before the trial of said suit; admit that Hartford contended in said suit that said Kearns-Gorsuch company, being such licensee, could not successfully attack the validity of the patents in suit; aver that said Kearns-Gorsuch company was in fact permitted to attack the validity of said patents, notwithstanding said license and said contention; admit that Hartford succeeded in sustaining only some of its claims in the suit against Kearns-Gorsuch; aver that the decision of the Circuit Court of Appeals for the Sixth Circuit in said suit is reported in 58 F. (2d) 701; aver further that Hartford filed a petition to the United States Supreme Court for certiorari in said suit, on account of a conflict between decisions of Circuit Courts of Appeals, but that said petition was denied, notwithstanding said conflict; and, except as hereinbefore admitted, deny the allegations of Paragraph 95.

96. These defendants admit the allegations of Paragraph 96 of the Complaint, except the allegation therein as to the cost to Hazel-Atlas of the suit referred to; and state that they are without knowledge or information sufficient to form a belief as to the truth of said excepted allegation.

97. These defendants admit that, after said decisions, Hartford and Owens entered into negotiations with Hazel-Atlas; deny that the allegations of (a), (b), (c) and (d) of said Paragraph 97 correctly set forth the purposes of Hartford and of Owens in entering into said negotiations; and aver that Hartford and Owens entered into said negotiations for the purpose of settling pending controversies, including the then pending patent litigation between Hartford and Hazel-Atlas, and of licensing Hazel-Atlas under their patents; and aver further that in a subsequent suit on the [fol. 532] Peiler patent No. 1,655,391, involved in the suit between Hartford and Hazel-Atlas, three separate petitions to the United States Supreme Court for certiorari were filed by defendant, all of which were denied. *Shawkee Mfg.*

Co. et al. v. *Hartford-Empire Co.*, 292 U. S. 640; 293 U. S. 600; and 296 U. S. 635.

98. These defendants deny the allegations of Paragraph 98 as pleaded; and aver that Hazel-Atlas and Hartford on July 1, 1932 entered into two agreements, one entitled "General License Agreement" and the other entitled "Supplemental Agreement."

99. These defendants admit the allegations of Paragraph 99.

100. These defendants admit the execution of the agreement referred to in Paragraph 100; aver that said paragraph does not correctly set forth the terms and provisions of said agreement, and therefore deny all allegations of Paragraph 100 except the execution of the said agreement as hereinbefore admitted; and refer to said agreement for a full and accurate statement of its contents.

101. These defendants admit that under the Hazel-Atlas and Hartford General License Agreement of July 1, 1932, Hazel-Atlas paid Hartford $1,000,000; admit that under the said agreement Hazel-Atlas agreed to pay rentals or royalties to Hartford on all inventions licensed by the agreement and used by Hazel-Atlas, including Hazel-Atlas inventions licensed to Hartford; aver that the allegations of Paragraph 101 do not correctly set forth the terms and provisions of said agreement, and therefore refer to said agreement of July 1, 1932 for a full and accurate statement of its contents; and, except as hereinbefore admitted, deny the allegations of Paragraph 101.

102. These defendants admit that under the General License Agreement of July 1, 1932 between Hartford and [fol. 533] Owens, the April 9, 1924 agreement between the same parties was canceled; deny that the remaining allegations of Paragraph 102 correctly set forth the terms and provisions of said agreement of July 1, 1932, and therefore deny all allegations of Paragraph 102 except as hereinbefore admitted and refer to said agreement for a full and accurate statement of its contents.

103. These defendants admit the execution of the General License Agreement of July 1, 1932 referred to in Paragraph 103; aver that said Paragraph 103 does not correctly set

forth the terms and provisions of said agreement, and therefore deny all allegations of said paragraph except the execution of the said agreement as hereinbefore admitted, and refer to said agreement for a full and accurate statement of its contents.

104. These defendants admit the execution on July 1, 1932 of an agreement between Hartford and Owens entitled "Suction Inventions License Agreement" referred to in Paragraph 104; aver that said Paragraph 104 does not correctly set forth the terms and provisions of said agreement, and therefore deny all allegations of said paragraph except the execution of the said agreement as hereinbefore admitted, and refer to said agreement for a full and accurate statement of its contents.

105. These defendants deny the allegations of Paragraph 105 of the Complaint.

106. These defendants deny the allegations of Paragraph 106 of the Complaint.

107. These defendants deny the allegations of Paragraph 107 as pleaded; and aver that the existence of the agreement between Hazel-Atlas and Hartford was known to Brockway Glass Company prior to the licensing of Brockway by Hartford; aver, upon information and belief, that [fol. 534] Brockway Glass Company had an agreement with The Kearns-Gorsuch Bottle Company and Hazel-Atlas; aver that Hartford was told of the existence of said agreement between Brockway and Kearns-Gorsuch and Hazel-Atlas; and deny that Hartford made any false representation to Brockway.

108. These defendants admit the allegations of Paragraph 108 of the Complaint; and aver that the excess in Hartford's payments to Owens and Hazel-Atlas over the royalties and rentals paid by Owens and Hazel-Atlas to Hartford was not contemplated or expected when the 1932 agreements were made, but was the result of circumstances unforeseen at the time when said agreements were made, principally the repeal of the Eighteenth Amendment to the Federal Constitution and the greatly increased demand for glass bottles which followed.

109. These defendants deny the allegations of Paragraph 109 of the Complaint.

110. These defendants deny the allegations and arguments of Paragraph 110 as pleaded; and aver that one effect of the July 1, 1932 agreements between Hartford and Hazel-Atlas was to take in as a Hartford licensee the largest manufacturer of glassware not theretofore licensed under Hartford's patents; aver that another important effect was to settle litigation and other serious controversies involving Hartford and Hazel-Atlas; aver that Hartford has never dominated or controlled the licensing of glass container machinery and never intended or attempted so to do; and that, therefore, the effect of said agreements was not to aid or extend any such domination or control by Hartford or any attempt thereto, but that their effect was to obtain recognition by Hazel-Atlas of patents owned by Hartford, including patents sustained by decisions of Circuit Courts of Appeals; and aver that neither Brockway Glass Company [fol. 535] nor Knox Glass Bottle Company, nor any other manufacturer of glassware accepted a license from Hartford only because Hazel-Atlas had taken a license from Hartford.

"Hartford-Lynch Agreement, 1933"

111. These defendants deny every allegation of Paragraph 111 as supplemented by plaintiff's particulars.

112. These defendants deny the allegations of Paragraph 112 as pleaded; aver that for several years prior to 1927, defendant Lynch Corporation marketed automatic narrow-neck bottle forming machines, and that in 1927 a large percentage of the narrow-neck bottle forming machines in use were Lynch machines; state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 112 as to the percentage of such machines in use; and aver that Hartford's principal reasons for acquiring the Sears & Lobb and Headley & Thompson forming machine patent rights referred to in said Paragraph 112 were to insure its own freedom to develop forming machines without infringing patents owned by others, and to insure to its feeder licensees the right to use forming machines without danger of such infringement.

113. These defendants deny the allegations of Paragraph 113 as pleaded; aver that Lynch and Hartford did not engage, between 1927 and 1933, in an extended controversy

regarding priority of patents for forming machinery; aver that for many years prior to 1933 interferences had been pending in the United States Patent Office between certain Headley & Thompson applications, referred to in Paragraph 76 hereof, and other applications for patents including some applications owned or controlled by Lynch; that the interference proceedings involving the said Headley & Thompson applications and the said Lynch applications were vigorously contested for several years until in June, [fol. 536] 1933, the Board of Appeals of the United States Patent Office awarded priority to the Headley & Thompson applications, and thus decided that Headley & Thompson were entitled to patents containing broad and fundamental claims covering forming machines then being marketed by Lynch and covering forming machines then being licensed by Hartford and widely used by Hartford licensees, and also covering forming machines of Owens; aver that on September 19, 1933, Hartford bought the Headley & Thompson applications from their then owners Whitall Tatum Company for approximately $200,000, and that Owens paid one-half of this sum; and state that they are without knowledge or information sufficient to form a belief as to the cost to Lynch of the said interference proceedings.

114, 115. These defendants admit that on August 23, 1933 defendants Lynch and Hartford entered into a license agreement; deny that the terms of such agreement are correctly set forth in Paragraphs 114 and 115; and refer to said agreement for a full and correct statement of its terms.

116. These defendants deny the allegations of Paragraph 116 of the Complaint, this denial being on information and belief as to defendant Lynch.

117. These defendants deny the allegations and arguments of Paragraph 117 as pleaded; and aver that under the 1933 agreement between Hartford and Lynch, as amended November 12, 1938, a purchaser from Lynch of either a press or a press and blow machine, embodying inventions of Hartford patents under which Lynch is licensed, may purchase such machine without being required to make any agreement with Hartford, on payment by Lynch to Hartford of a single nominal royalty; and a purchaser from Lynch of a narrow-neck forming machine embodying inventions of Hartford patents under which Lynch

[fol. 537] is licensed must obtain a "former license" from Hartford, to which reference is made for a full and accurate statement of its terms; and that Lynch builds and sells still other forming machines as to which neither Lynch nor the purchaser is required to make any payment to Hartford or to make any agreement with Hartford.

118 through 121. These defendants deny the allegations of Paragraphs 118, 119, 120 and 121, including the allegations of plaintiff's particulars as to Paragraph 119 which are not admitted in paragraphs of this Answer corresponding to paragraphs of the Complaint referred to in said particulars.

Alleged "Elimination of Competition in Lehrs"

122. These defendants deny the allegations of Paragraph 122 as supplemented by the allegations of plaintiff's particulars which are not admitted to be true in paragraphs of this Answer corresponding to paragraphs of the Complaint referred to in said particulars.

123. These defendants deny that in 1934, or at any other time, Hartford attempted, either jointly with Owens or otherwise, to purchase the business of Amsler-Morton Company; admit that in 1934 Hartford instituted suit against Swindell Brothers, Inc., claiming that the Amsler-Morton lehrs used by Swindell Brothers infringed Hartford patents; admit that Swindell Brothers had previously also licensed lehrs from Hartford; aver that such Hartford lehrs were licensed under agreements containing the provision that Swindell Brothers acknowledged the validity of the Hartford patents under which said lehrs were licensed; aver that Hartford contended, in said suit, that Swindell Brothers, on account of said license provisions, could not attack the validity of certain of the patents in suit, but that Swindell Brothers were, in fact, permitted to attack the validity of said patents, notwithstanding said license and said contention; deny that Amsler-Morton [fol. 538] Company, in defending said suit for Swindell Brothers, "was limited to a passive defense of non-infringement and was unable actively to contest the validity of the Hartford patents"; admit the allegations in Paragraph 123 as to the holdings in favor of Hartford of the Circuit Court of Appeals for the Fourth Circuit and as to the denial of

certiorari by the United States Supreme Court; state that they are without knowledge or information sufficient to form a belief as to the truth of the allegation in the last sentence of Paragraph 123 that Amsler-Morton has since manufactured and sold one lehr; and, except as hereinbefore admitted, deny the allegations of said Paragraph 123.

124. These defendants admit the allegations of Paragraph 124 of the Complaint, except the allegation that Hartford purchased the Nagle lehr patent rights from Thatcher; and aver that Hartford purchased said rights from Nagle.

125. These defendants deny every allegation of Paragraph 125 of the Complaint.

"1935 Hartford-Owens Agreements"

126, 127. These defendants admit that, on September 30, 1935 and on October 1, 1935, Owens and Hartford entered into agreements identified in Paragraphs 126 and 127; aver that the terms of said agreements are not correctly set forth in Paragraphs 126 and 127; and therefore deny all allegations of said Paragraphs 126 and 127 except the execution of said agreements as hereinbefore admitted, and refer to said agreements for full and accurate statements of the contents thereof.

Further answering, these defendants aver that the agreement referred to in Paragraph 126, dated September 30, 1935, between Owens and Hartford, entitled "General License From Owens-Illinois Glass Company and Owens-[fol. 539] Illinois Pacific Coast Company to Hartford-Empire Company," specifically canceled all then existing contracts, licenses, and agreements between Owens and Hartford and between Owens-Illinois Pacific Coast Company (a subsidiary of Owens) and Hartford. The termination of previous agreements effected by the aforesaid agreement of September 30, 1935, included a termination of Owens' right to one-third of Hartford's yearly income from "Licensed Inventions."

The agreements identified in Paragraphs 126 and 127 of the Complaint are the only agreements that are now in force, or have been in force since October 1, 1935, between Owens and Hartford, except an agreement made in 1939, which settled a dispute as to the construction to be placed upon certain paragraphs of the "Consolidated Lehr Agreement" of October 1, 1935.

Alleged "Hartford-Owens-Thatcher-Liberty Agreements Regarding Milk Bottles"

128. These defendants deny every allegation of Paragraph 128 of the Complaint.

129. These defendants admit on information and belief that defendant Thatcher acquired from Owens an exclusive license for the use of the Owens suction machine in the production of milk bottles; and state that they are without knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraph 129.

130. These defendants admit that in 1916 Hartford licensed four companies to produce milk bottles by the use of Hartford paddle feeders; admit that Thatcher, in or about 1920, acquired the assets of the Essex, Travis and Lockport companies referred to; deny, on information and belief, that Thatcher, in 1920 or at any other time, acquired the stock of any of said companies; admit that Thatcher entered into an agreement with the J. T. & A. Hamilton Com-
[fol. 540] pany involving the payment by Thatcher to said Hamilton Company of $100,000; deny that Thatcher acquired title to the machinery used by the Hamilton Company and leased and licensed by Hartford; and state that they are without knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraph 130.

131. These defendants deny the allegations of Paragraph 131 as pleaded; and aver that on December 8, 1920, Hartford entered into a certain license and lease agreement with Thatcher, which agreement was canceled April 13, 1928; aver that said Paragraph 131 does not correctly state provisions of said agreement; and refer to said agreement for a full and accurate statement of its provisions.

132. These defendants deny the allegations of Paragraph 132 as pleaded; aver that Hartford's Single Feeder was perfected prior to 1925; aver that Hartford first leased its Single Feeders and licensed the use thereof to Thatcher in 1927 for the production of milk bottles; aver that prior to 1927, Thatcher had contended that it had a certain right in Hartford's Single Feeder, but thereafter, and prior to 1927, agreed and acknowledged that it had no such right; and aver that Hartford leased its Single Feeders and li-

censed and/or leased such feeders to companies other than Thatcher for the production of milk bottles both before and after 1927.

133. These defendants admit that under date of April 13, 1928, Hartford and Thatcher entered into an agreement entitled "Consolidated Agreement"; aver that said agreement expired by its terms on January 1, 1936 and that a new agreement between Hartford and Thatcher was executed as of January 1, 1936; aver that the contents of said agreement of April 13, 1928 are not correctly set forth in Paragraph 133 and refer to said agreement for a full and accurate statement of its terms.

[fol. 541] 134. These defendants deny the allegations of Paragraph 134 as pleaded; and aver, upon information and belief, that in 1930 Owens acquired the assets of Berney-Bond Glass Company; and aver that said Berney-Bond Glass Company had licenses, unrestricted as to quantity of production and granted in 1923, to manufacture milk bottles, during the term specified in the licenses, by the use of patented glass feeders licensed to said Berney-Bond Glass Company by Hartford.

135. These defendants admit, on information and belief, that in December, 1932, Thatcher acquired the milk bottle business and certain machinery and license rights of Knox Glass Bottle Company; admit that in August, 1932 Hartford had granted a license to the Knox company which provided that Knox's annual production of milk bottles by the use of Hartford machinery should be limited to 75,000 gross; deny that Hartford gave, or was required or requested to give, its approval to the sale of the milk bottle business of the Knox company to Thatcher, except that the Knox company requested Hartford to cancel Knox's milk bottle license from Hartford, which request was granted; and state that they are without knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraph 135.

136. These defendants admit, on information and belief, the allegations of Paragraph 136.

137. These defendants admit that by 1934, to wit, in 1926, defendant Liberty Glass had acquired a license from

defendant Hartford, unrestricted as to quantity, for the manufacture of milk bottles which it distributed in various parts of the southwest, including Texas; aver that Liberty Glass also distributed milk bottles in other parts of the United States; admit, on information and belief, that in or about 1934, the Knape-Coleman Glass Company began manufacturing and selling milk bottles in Texas in compe-[fol. 542] tition with defendant Liberty Glass and other manufacturers of milk bottles; aver that said Knape-Coleman Glass Company used, in its manufacture of milk bottles, machinery infringing patents owned by Hartford; admit that, upon being informed thereof by defendant Liberty Glass, but not at the request of Liberty Glass, Hartford notified Knape-Coleman that its machinery infringed Hartford patents; admit that Knape-Coleman asked Hartford for a license to manufacture milk bottles at the usual royalty rate and that Hartford refused this request; aver that such refusal was based on information that the Knape-Coleman company was financially unsound and was unlikely to succeed in business; admit that Hartford instituted a suit against Knape-Coleman for alleged infringement; admit that this suit was settled; and aver that such settlement was made at Knape-Coleman's request, and included the granting by Hartford to Knape-Coleman of a license to use said machinery for a period of six months, with the right to continue under license if Knape-Coleman so desired, and if Knape-Coleman would furnish to Hartford a satisfactory financial statement; that no such financial statement was furnished: that said six-month license was extended for several additional months at Knape-Coleman's request, and that Knape-Coleman then relinquished its right to a continued license, and thereupon delivered its infringing feeders to Hartford which had purchased them in connection with the said settlement; and, except as hereinbefore admitted, deny the allegations of Paragraph 137.

138. These defendants deny the allegations of Paragraph 138 as pleaded, and refer to the agreement of January 1, 1936 between Hartford and Thatcher, mentioned in Paragraph 138, for a full and accurate statement of its terms; and aver that Thatcher's exclusive right to use the Hartford "Two Table" milk bottle forming machine had been held by Thatcher since 1920.

[fol. 543] 139. These defendants deny the allegations of Paragraph 139 as pleaded; aver that no license of Hartford, that is authorized to manufacture milk bottles under Hartford patents, is restricted in the production of milk bottles by means of any machinery or methods not covered by Hartford patents; aver that such machinery is available for such use; aver that license agreements between Hartford and the licensees mentioned in said Paragraph 139 were executed on or about the dates specified in Paragraph 139 and are still in force; and refer to said license agreements for full and accurate statements of their provisions.

140. These defendants admit that license agreements between Hartford and the licensees mentioned in Paragraph 140 were executed on or about the dates specified in Paragraph 140 and are still in force; aver that the provisions of said license agreements referred to in Paragraph 140 are not adequately set out in said paragraph; and refer to said license agreements for full and adequate statements of their provisions.

141. These defendants admit that Hartford has refused from time to time to license additional concerns to use its inventions for milk bottle production; and that Hartford has refused to license some of the persons and concerns specified in said Paragraph 141 as having been refused; deny that such refusals were made to protect Owens, Thatcher and Liberty from competition; and, except as hereinbefore admitted, deny the allegations of Paragraph 141.

142. These defendants deny the allegations of Paragraph 142.

[fol, 544] Alleged "Hartford, Owens, Hazel-Atlas-Ball Brothers Agreements"

143. These defendants deny every allegation of Paragraph 143 as supplemented by plaintiff's particulars.

144, 145. These defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 144 and 145.

146. These defendants admit that at no time prior to March 25, 1933 did Ball Brothers have a license from Hart-

ford to use machinery covered by patents owned by Hartford; admit that prior to March 25, 1933, Ball Brothers obtained certain patents or patent rights relating to automatic machinery for the manufacture of fruit jars and other glassware; admit that Ball Brothers claimed that its machinery was outside of the scope of the Hartford patents and inventions; aver that Hartford claimed that certain of Ball Brothers' feeders were infringements of Hartford's patent rights; state that they are without knowledge or information sufficient to form a belief as to the alleged development by Ball Brothers of automatic machinery for the manufacture of fruit jars; and deny all allegations of Paragraph 146 not hereinbefore referred to.

147. These defendants admit that between November, 1924 and March 25, 1933, Hartford carried on negotiations with Ball Brothers with the view to inducing Ball Brothers to take a license; aver that Hartford desired to license Ball Brothers to manufacture glassware, including domestic fruit jars, under Hartford's patents; and aver that they are without knowledge or information sufficient to form a belief as to the reasons why Ball Brothers from time to time during the said period refused to take such a license.

148. These defendants deny the allegations of Paragraph 148 as pleaded; and aver that, prior to March 25, [fol. 545] 1933, defendants Owens and Hazel-Atlas, each of whom was licensed under Hartford patents, were competitors of Ball Brothers in the manufacture of domestic fruit jars; aver that General Glass Corporation held a license under Hartford patents which included the right to manufacture domestic fruit jars but that, on information and belief, said General Glass Corporation did not manufacture domestic fruit jars; aver that Salem Glass Works held a license from Hartford permitting the manufacture on Hartford machinery of "Eureka" fruit jars and "Lightning" fruit jars; aver that Gayner Glass Works held a license from Hartford permitting the manufacture on Hartford machinery of 120,000 gross of domestic fruit jars during a two-year period beginning in 1932 and ending in 1934; and aver, on information and belief, that Knox Glass Bottle Company and Brockway Glass Company manufactured domestic fruit jars on machinery not licensed from Hartford, prior to March 25, 1933.

149. These defendants admit that from time to time prior to March 25, 1933, Hartford refused to grant to certain others the right to manufacture glass fruit jars for domestic use by means of machinery covered by Hartford patents, and that some of such refusals were made in view of a possible license arrangement between Hartford and Ball Brothers; aver that prior to March 25, 1933, Hartford granted to several licenses the right to manufacture such fruit jars; deny that Hartford desired to, or did, induce Ball Brothers to become a party to any conspiracy, monopoly or combination alleged in the Complaint or to any other conspiracy, monopoly or combination; and state that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 149.

150. These defendants admit that in August, 1932, when Knox Glass Bottle Company and its affiliated companies [fol. 546] obtained a license from Hartford, such license did not permit Knox to manufacture domestic fruit jars on Hartford's feeders; deny the remaining allegations of said Paragraph 150 as pleaded; aver, on information and belief, that some one or more of the Knox group of companies, after August 1932, produced and distributed domestic fruit jars manufactured on machines known as "Knox-O'Neill Machines"; and state that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 150.

151. These defendants deny every allegation of Paragraph 151 as supplemented by plaintiff's particulars; but they admit that by an oral arrangement and by an exchange of letters dated March 27, 1933 and March 29, 1933, Hartford canceled $44,000 of the $100,000 of notes of the Knox group which Hartford had received in August, 1932 from the Knox group; aver that neither Hartford individually, nor Hartford in conjunction with Ball Brothers, coerced or induced the Knox group to enter into the agreements referred to in said Paragraph 151; and further aver, on information and belief, that an agrement was made between the Knox group and Ball Brothers dated on or about March 23, 1933.

152. These defendants admit that in January, 1933, when Brockway Glass Company obtained a license from Hart-

ford, such license did not permit Brockway to manufacture domestic fruit jars on Hartford feeders; and deny, on information and belief, the other allegations of Paragraph 152.

153. These defendants deny the allegations of Paragraph 153 as pleaded; and aver, on information and belief, that Brockway Glass Company entered into an agreement with Ball Brothers on or about April 27, 1933, with relation to Brockway's domestic fruit jar business; deny that Ball Brothers, with the knowledge and consent of Hartford, [fol. 547] coerced or induced Brockway Glass Company to enter into said agreement, either in order to carry out any conspiracy, monopoly or combination in restraint of trade or for any other purpose; deny that Hartford took any part in making said agreement or knew of its existence until after it was made; deny that said agreement was entered into in order to carry out any conspiracy, monopoly or combination in restrain of trade; and state that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 153.

154. These defendants admit that under date of March 25, 1933, Hartford entered into an agreement with Ball Brothers, to which reference is made for a full and accurate statement of its contents; admit that under said agreement Ball Brothers paid Hartford $400,000; admit that Hartford reacquired the Hartford license theretofore held (but not used) by General Glass Corporation to manufacture domestic fruit jars by the use of Hartford patented machinery and paid General Glass Corporation $100,000 therefor; admit that Ball Brothers agreed to pay royalties on the use of such of the Ball Brothers' feeders as Hartford claimed infringed its patents; and, except as hereinbefore admitted, deny the allegations of Paragraph 154.

155. These defendants admit the allegations of said Paragraph 155 except the allegation that "Ball Brothers agreed not to sell any of its inventions without first offering to sell such inventions to Hartford"; and aver that the said agreement was restricted to inventions relating to glass feeders and did not relate or extend to any other kind of inventions.

156. These defendants deny every allegation of Paragraph 156.

[fol. 548] 157. These defendants admit, on information and belief, that since March 25, 1933, Hazel-Atlas has not produced more than 300,000 gross of domestic fruit jars per year; deny, on information and belief, that since March 25, 1933 Owens has not produced more than 100,000 gross of domestic fruit jars per year; and admit, on information and belief, that since March 25, 1933 the Knox group and Brockway Glass Company have not produced any domestic fruit jars.

158. These defendants admit that in 1934, the Hartford license held by Gayner Glass Works, authorizing it to use Hartford machinery in the production of domestic fruit jars, was not renewed; aver that said Gayner Glass Works notified Hartford in 1933 to cancel its license to produce such jars; aver further that the said Gayner license from Hartford entitled Gayner to produce 120,000 gross of domestic fruit jars by the use of Hartford machinery during a two-year period beginning in 1932 and ending in 1934; and, except as hereinbefore admitted, deny the allegations of Paragraph 158.

159. These defendants admit that prior to 1936, Ball Brothers asked Hartford to stop Three Rivers Glass Company, a Hartford licensee, from manufacturing domestic fruit jars in violation of the license agreement from Hartford to Three Rivers Glass Company and that Hartford repeatedly sent notices to Three Rivers to refrain from manufacturing domestic fruit jars on its licensed Hartford machinery; aver that such manufacture of domestic fruit jars by Three Rivers Glass Company was not in violation of the March 25, 1933 agreement between Ball Brothers and Hartford, but that if Hartford had granted such permission to Three Rivers Glass Company, Hartford would have violated its said agreement with Ball Brothers; and state that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 159.

[fol. 549] 160. These defendants deny every allegation of Paragraph 160 of the Complaint; and aver, upon information and belief, that domestic fruit jars are manufactured in large quantities by Alexander H. Kerr & Company by means of equipment which, so far as these defendants are advised,

is not covered by any patents of Hartford, and that said Alexander H. Kerr & Company is the third largest manufacturer of domestic fruit jars in the United States.

161. These defendants deny the allegations of Paragraph 161 as pleaded; aver that since its March 25, 1933 agreement with Ball Brothers, Hartford has refrained from licensing additional fruit jar production under its patents, in order to comply with Hartford's contractual obligations; that beginning in 1933, Hartford carried on negotiations with Ball Brothers and Alexander H. Kerr & Company, which was represented in such negotiations by C. H. Hubbard, with a view to licensing said Alexander H. Kerr & Company to manufacture domestic fruit jars under Hartford's patents, but that Kerr & Company declined such license and has continued to manufacture domestic fruit jars in large quantities by means of machinery which, so far as these defendants are advised, is not covered by any patents of Hartford; aver that Hartford has not refused to license one Pine; aver further that in August, 1937, the Sandy Valley Grocery Company inquired of Hartford as to equipment for the manufacture of domestic fruit jars and also as to the cost of equipping a plant and that Hartford, in view of its contractual obligations with Ball Brothers, advised said Sandy Valley Grocery Company that Hartford had no equipment to offer for the manufacture of domestic fruit jars; aver that Ball Brothers urged that Hartford set an early trial date of its litigation against the F. E. Reed Glass Company and offered the use of its patents in the litigation in the event that it could be shown that the feeders used by F. E. Reed Glass Company infringed Ball Brothers' pat-
[fol. 550] ents; and aver that no such infringement was found by Hartford and no suit on such patents was ever brought.

162. These defendants admit that since March, 1933, Ball Brothers has never used glass feeders furnished by Hartford in connection with its regular manufacture of domestic fruit jars; but aver that the glass feeders which Ball has used since March, 1933 in its manufacture of domestic fruit jars embody inventions covered by patents of Hartford; admit that Ball Brothers at one time refused to purchase forming machines from Defendant Lynch; deny that Ball Brothers would have had to use Hartford feeders with

Lynch machines; and aver that Ball Brothers has since March, 1933 purchased numerous forming machines from Lynch.

163, 164. These defendants deny every allegation of Paragraphs 163 and 164 of the Complaint.

Alleged "Hartford, Owens and Anchor Hocking Relations"

165. These defendants admit, on information and belief, that for a number of years prior to 1931, there were various manufacturers of a general line of glass containers smaller than Owens and in competition with Owens; aver that such competition by smaller companies has continued at all times since 1931; and state that they are without knowledge or information sufficient to form a belief as to the truth of the other allegations of Paragraph 165.

166. These defendants admit the allegations of Paragraph 166 of the Complaint; and aver that, on or about December 27, 1931, Turner Glass Corporation, having heavy obligations to banks and mortgage-holders, and owing large amounts of current indebtedness, agreed to the appointment of a receiver in a proceeding against it in which Hartford was the petitioning creditor; and aver that, at that time, [fol. 551] said Turner Glass Corporation owed Hartford approximately $80,000 in unpaid royalties and $30,000 in unpaid license fees.

167. Answering Paragraph 167 of the Complaint, as supplemented by Paragraph IV (a) and (b) of plaintiff's bill of particulars filed in response to motion of defendant Anchor Hocking, these defendants admit that General Glass Corporation was organized in 1931 and acquired the assets of Turner Glass Corporation; deny that Owens and Hartford were in constant communication with respect to the reorganization of Turner and the organization of said General Glass; deny that the organization of said General Glass and the acquisition by it of the assets of Turner Glass, and the subsequent acquisition of all the stock of General Glass by Hocking Glass Company, created any conspiracy, monopoly or unlawful combination in restraint of trade; deny that defendant Hartford took any part in the organizing of said General Glass, except only to the extent that the plan for the organization of said General Glass was discussed with Hartford for the purpose of obtaining Hart-

ford's agreement that said General Glass would receive licenses on Hartford equipment held by the receiver of Turner in the event that such equipment should be purchased by said General Glass; and admit, on information and belief, that one-half of the stock of General Glass was acquired by Hocking Glass Company and the other half by Thatcher, and that in 1935, Thatcher sold its interest in General Glass to Hocking Glass Company; and state that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of said Paragraph 167 as supplemented by said Bill of Particulars.

168. Answering Paragraph 168 of the Complaint, as supplemented by Paragraph V (a), (b) and (c) of plaintiff's Bill of Particulars filed in response to motion of defendant Anchor Hocking, these defendants admit that in 1931 (not [fol. 552] in 1932), General Glass Corporation purchased certain assets of The Nivison-Weiskopf Company; deny that such purchase was made at the request of defendant Hartford, either alone or in conjunction with Owens; deny that such purchase was made pursuant to any agreement whatever between General Glass and Hartford; aver that Hartford later, to wit in 1932, agreed that the infringement suit against The Nivison-Weiskopf Company would be settled and that Hartford would buy certain Nivison-Weiskopf patents and patent applications from General Glass; state they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 168; and as to said Paragraph V of said Bill of Particulars, admit the existence of an agreement dated September 16, 1932, and a stipulation dated November 23, 1932, both between General Glass Corporation and defendant Hartford, such stipulation being filed in the United States District Court for the Southern District of Ohio in the case of *Hartford-Empire Co.* v. *The Nivison-Weiskopf Co.*, but deny that such agreement and stipulation, or either of them, evidences in whole or in part the agreement alleged in Paragraph 168 of the Complaint; deny every allegation of sub-paragraph (b) of said Paragraph V; admit that said agreement of September 16, 1932 and said stipulation of November 23, 1932 were executed by defendant F. Goodwin Smith as president of defendant Hartford and by defendant Isaac J. Collins as president of General Glass Corporation, but deny every other allegation contained in

sub-paragraph (c) of said Paragraph V of said Bill of Particulars.

169. These defendants deny that in 1937, or at any other time, Hartford, either individually or in conjunction with Owens, either in furtherance of any conspiracy, monopoly or combination in restraint of trade or otherwise, induced Hocking Glass Company and Anchor Cap Company to merge into defendant Anchor Hocking; state that they are without knowledge or information sufficient to form a belief [fol. 553] as to the truth of the allegation that the group designated in said paragraph as "the Levis Group" aided and financed such merger; admit that defendant Anchor Hocking has been, since the time of its creation, a large manufacturer of glass containers in the United States; and deny every allegation of said Paragraph 169 not hereinbefore fully answered.

Further answering in respect to Paragraph VI (a), (b) and (c) of plaintiff's Bill of Particulars filed in response to motion of defendant Anchor Hocking, these defendants deny every allegation of said paragraph of said Bill of Particulars, except as the same may be admitted to be true in paragraphs of this Answer bearing numbers corresponding to the paragraphs of the Complaint set forth in said Paragraph VI of said Bill of Particulars.

Alleged "The Glass Container Association; Production Quotas and Maintenance of Prices"

170. These defendants admit, upon information and belief, that the defendant Charles R. Stevenson is the business manager of the defendant Glass Container Association, that the defendant Emory G. Ackerman is the assistant business manager of said Association, and that I. J. Jennings was formerly employed by said Association; and state that they are without knowledge or information sufficient to form a belief as to the truth of the other allegations of said Paragraph 170.

171. These defendants admit, on information and belief, that defendants Owens, Hazel-Atlas, Thatcher, Ball Brothers, Liberty Glass and Anchor Hocking are members of defendant Glass Container Association; and state that they are without knowledge or information sufficient to form a

belief as to the truth of the other allegations of Paragraph 171.

172. These defendants admit, on information and belief, that both prior to and since 1928, the Association's activi- [fol. 554] ties included the collection and dissemination of statistical data and the issuance of advertising matter regarding the use of glass; state that they are without knowledge or information sufficient to form a belief as to the truth of the allegation that prior to 1928 the Association's activities were limited to such activities; and deny, on information and belief, every other allegation of Paragraph 172.

173. These defendants deny the allegations of Paragraph 173 in so far as concerns these answering defendants; and deny said allegations upon information and belief in so far as concerns the other defendants herein.

174. These defendants deny, on information and belief, that from time to time the Association, at the request of Hartford and Owens, has dissuaded new firms from entering the glass-container industry; deny that Hartford is not a member of the Association; and aver that Hartford is a contributing member of the Association but takes no part in, and has no knowledge of, the transactions between the Association and glassware manufacturers.

175 through 179. These defendants deny the allegations of Paragraphs 175, 176, 177, 178 and 179 as supplemented by plaintiff's particulars relating to Paragraph 176.

180. These defendants deny every allegation of Paragraph 180 as supplemented by plaintiff's particulars, and aver that Hartford has not used, and is not now using, any power or domination to establish, maintain or enforce any system of price leadership in the glass-container industry.

Alleged "Espionage and Similar Tactics by Hartford, Owens and Corning"

181. These defendants deny the allegations of Paragraph 181, as supplemented by plaintiff's particulars, in so far as they relate to defendant Hartford, except as may be admit- [fol. 555] ted in paragraphs of this Answer corresponding to the paragraphs of the Complaint referred to in said particulars; and deny said allegations upon information and be-

lief in so far as they relate to defendants Owens and Corning.

182. These defendants deny the allegations of Paragraph 182; and aver that Hartford's license and lease agreements generally provide that duly authorized agents or employees of Hartford shall, at all reasonable times, be allowed access to the licensed and leased machinery for the purpose of inspecting the same during its operation and use; aver that Hartford has never exercised such right in such a way as to maintain surveillance of its licensees or to police any restrictive provisions of the license and lease agreements; aver that Hartford has collected, with the licensees' co-operation, data with respect to the operation of the licensed and leased machinery and methods and that such data is collected for the purpose of ascertaining the efficiency of such licensed and leased machinery and methods and for the purpose of enabling such efficiency to be increased, if possible; and aver that Hartford also collects data furnished to it by the licensees themselves as to the quantity and character of the licensees' output, and that such data is used to indicate the efficiency of the licensed equipment and methods.

183. These defendants deny the allegations of Paragraph 183; and particularly deny that any person representing Hartford performed any act alleged in said Paragraph 183.

184. These defendants deny every allegation of Paragraph 184, except that they admit that Crown Cork and Seal Company has never been a licensee of Hartford or of Owens.

185. These defendants deny every allegation of Paragraph 185 of the Complaint.

[fol. 556] 186, 187. These defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 186 and 187 of the Complaint.

Alleged "Volume of Business and Profits"

188. These defendants deny that Hartford has made "excessive profits"; state that they are without knowledge or information sufficient to form a belief as to the truth of the allegation that "excessive profits" have been made by the other defendants named in Paragraph 188; deny that they have participated in, or have any knowledge of, any con-

spiracy, monopoly or combination in restraint of trade, either alleged in the Complaint or otherwise involving the glassware industry or glass-making machinery; deny "control and domination" by Hartford, individually or in conjunction with Owens, over patents on glass-making machinery; deny any "licensing policy" on the part of Hartford, either individually or in conjunction with Owens, which resulted in the making of excessive profits as alleged in said Paragraph 188; deny that excessive profits have resulted from "license agreements" to which Hartford was a party; and, on information and belief, deny the existence of "artificially high," "uniform" or "non-competitive" prices for any types of glass containers.

189. These defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 189.

190. These defendants admit that Hartford, for a number of the more recent years, has had substantial earnings; but aver that at the end of its first ten years of business, Hartford's predecessor Hartford-Fairmont Company had no net profits and had incurred substantial losses, and that the net profits of Hartford and its predecessor Hartford-Fairmont Company from 1912 through 1937 averaged approximately [fol. 557] 9% of the invested capital; admit that Hartford's total income and net income for the year 1937 were substantially as alleged in Paragraph 190; but aver that said year 1937 was a year of exceptionally large earnings for Hartford and for the entire glassware industry; and deny that in 1937 the per cent. of Hartford's net income to capital employed in operations equalled 67.77%.

191 through 198. These defendants state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 191, 192, 193, 194, 195, 196, 197, and 198 of the Complaint.

Alleged "Restrictions on Machinery and Restrictions on Use and Production of Glass Containers"

199. These defendants deny the allegations of said Paragraph 199 in so far as concerns Hartford; state that they are without knowledge or information sufficient to form a belief as to the truth of said allegations in so far as concerns

thereto which are specifically referred to in said paragraphs; aver that said agreements are now in force except [fol. 560] as some of them have been modified by amendments; aver that the said license agreements and amendments thereto correctly set forth the rights of the licensees to use the particular patented machinery covered by the respective agreements, and refer to said agreements and amendments for full and accurate statements of such rights; deny that any provisions included in said agreements, referred to in the Complaint as "limitations", are imposed unlawfully or improperly; deny that any of such provisions unduly or unreasonably restrain competition among Hartford's licensees or between them and others, or were intended to have such effect; aver that said provisions, referred to in the Complaint as "limitations", are in fact grants of license rights under patents, permitting the licensees to manufacture types and kinds of glassware which, without such license rights, the licensees could not have manufactured at all with machinery and methods patented by Hartford; and aver further that none of Hartford's licenses prevent the licensees from manufacturing any and all kinds of glassware by machinery and methods not covered by lawfully issued patents owned by Hartford.

217. These defendants deny every allegation of Paragraph 217 of the Complaint.

218. These defendants admit that Hartford has refused to license certain alleged potential producers of glassware, including some, but not all, of the persons and concerns specified in Paragraph 218; deny that the said refusals, or any of them, were imposed unlawfully, improperly or in any manner exceeding the right of Hartford to select its own customers and to license under the lawfully issued patents owned by Hartford; aver that each such refusal was in the *bona fide* exercise of Hartford's right to select its own licensees; deny that any of said refusals were intended to unduly or unreasonably restrain competition in the glassware industry or have had such effect; and aver [fol. 561] further that applicants for Hartford licenses are prevented from using Hartford's inventions at all by the lawful grant of United States patents, giving to Hartford the right to exclude all others from using its patented inventions.

219. These defendants deny the allegations of Paragraph 219; but aver that, in 1937, 67.4% of the glass containers produced and in the United States were made by the use of glass feeders licensed by Hartford, and that 29.2% were made on suction machines by Owens, and that 3.4% were made by others; and aver further that neither Hartford nor Owens has any interest in, or rights under, the patents of the other except that each is a nonexclusive licensee under a portion only of the patents of the other; and aver that Hartford and Owens are each free to grant licenses and otherwise deal in its own patents as it sees fit.

The Complaint contains no paragraphs numbered 220 to 224, inclusive.

225. These defendants deny every allegation of Paragraph 225 of the Complaint.

226. These defendants state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 226.

227. These defendants admit that two manufacturers of glass containers are being sued for patent infringement by Hartford; admit that all but three of the companies referred to in Paragraph 227 are Hartford licensees; and state that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 227, except that, on information and belief, they admit that the percentages stated in Paragraph 227 with respect to the quantities of glass containers man- [fol. 562] ufactured by defendants Owens, Hazel-Atlas, Anchor-Hocking, Thatcher and Ball Brothers are substantially correct for the year 1937; and except that they deny, on information and belief, that not one of the "thirty-six other companies" referred to in Paragraph 227 manufactures more than 2.02% of all glass containers produced in the United States.

228. These defendants admit, on information and belief, that all but one of the manufacturers of milk bottles in the United States are Hartford licensees; admit, on information and belief, that the percentages stated in Paragraph 228 with respect to the quantities of milk bottles manufactured by the defendants Owens, Thatcher and Liberty are substantially correct for the year 1937; and state that

they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 228.

229. These defendants deny that Alexander H. Kerr & Company is now being sued by Hartford for alleged infringement or has ever been sued by Hartford; and state that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 229.

230. These defendants deny every allegation of Paragraph 230; and further deny that they, or any one or more of them, individually or with one another, or with anyone else, have established or maintained, or intended, or now intend, to establish or maintain, any conspiracy or monopoly or combination in restraint of trade, or have been guilty of any acts alleged in the Complaint or otherwise having the effect of tending to produce the results, either in whole or in part, charged in Paragraph 230.

231. Answering further, these defendants aver that the acts and things alleged in the Complaint to have been done [fols. 563-572] by Hartford, and hereinbefore admitted, have been lawful and within the rights of Hartford as the owner of and licensor under duly issued United States patents owned by Hartford; that so far as Hartford has, as admitted in this Answer, included restrictions in its licenses or refused to grant licenses, Hartford has acted only within the established right of a patent owner to keep his patents to himself or to license them, in whole or in part, for complete or specified uses to such persons as he may select; and that such restrictions and limitations as Hartford has included in its licenses are conditions, the performance of which is reasonably within the reward which Hartford, by grant of its patents, is entitled to secure.

232. Answering further, these defendants jointly and severally deny each and every allegation, argument and argumentative heading, contained in the Complaint and contained in plaintiff's particulars, which is not in this Answer expressly admitted to be true, or as to which these defendants have not pleaded lack of knowledge.

Wherefore, these defendants pray that the Complaint be dismissed as to them, and that they recover their costs.

E. J. Marshall, S. S. Wall, Attorneys for the Within Named Defendants, Nicholas Building, Toledo, Ohio.

Of Counsel: Thomas G. Haight, 15 Exchange Place, Jersey City, N. J.

Edgar J. Goodrich, Investment Building, Washington, D. C.

[fol. 573] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

SUPPLEMENTAL ANSWER OF CORNING GLASS WORKS AND EMPIRE MACHINE COMPANY, ET AL.—Filed October 15, 1940

The defendants Corning Glass Works and Empire Machine Company, and the defendants Alanson B. Houghton, Amory Houghton, Arthur A. Houghton, Jr., Alexander D. Falck, Eugene C. Sullivan, William H. Curtiss, George D. Macbeth, Glen W. Cole, P. W. Jenkins, J. L. Peden, W. C. Decker, Arthur L. Day, and George B. Hollister (hereinafter referred to as the "individual defendants") for their supplemental answer to the plaintiff's complaint herein allege that:

(1) Subsequent to the filing of said defendants' answers to the complaint herein, the defendants Corning Glass Works, Empire Machine Company and Hartford-Empire Company have cancelled and terminated the following agreements:

[fol. 574] (a) The agreement dated June 30, 1916 between defendant Empire Machine Company and Hartford-Fairmont Company (predecessor of defendant Hartford-Empire Company), referred to in paragraph 41 of the complaint.

(b) The agreement dated October 6, 1922 between Hartford-Fairmont Company and defendants Corning Glass Works, Empire Machine Company and Hartford-Empire

Company, known as "Agreement Relating to Patents Rights and Formulas," referred to in paragraph 43 of the complaint.

(c) All amendments of the aforesaid agreements dated June 30, 1916 and October 6, 1922.

(2) The aforesaid agreements dated June 30, 1916 and October 6, 1922 are the only agreements referred to in the complaint to which the defendants Corning Glass Works and Empire Machine Company are parties except the agreement dated October 6, 1922 between Hartford-Fairmont Company, defendants Empire Machine Company and the individual defendants Alanson B. Houghton, Alexander D. Falck, Bartlett Arkell, William H. Honiss, J. Dale Dilworth, F. Goodwin Smith, and Arthur L. Day, known as "Agreement for Formation of Hartford-Empire Company," referred to in paragraph 42 of the complaint. Said agreement was fully executed and the provisions thereof performed by the parties thereto.

(3) Defendant Corning Glass Works now has no exclusive license under any Hartford-Empire patents, or machines covered by Hartford-Empire patents, in the fields of glass bulbs, heat-resisting ware or in any other field referred to in the complaint. Such cancellation has removed all restrictions upon patents or machines of Hartford-Empire Company imposed by or resulting from the provi- [fol. 575] sions of any license granted by either Hartford-Fairmont Company or Hartford-Empire Company to defendants Corning Glass Works or Empire Machine Company and has removed all rights of preference, priority and exclusive fields granted said last mentioned defendants thereunder. Defendant Corning Glass Works now has no preferential position over any other licensee or lessee of the patents or machinery of Hartford-Empire Company in respect to rates of royalties or terms of leasing or licensing.

(4) By reason of the aforesaid facts, there is now no genuine issue as to any material fact or issue of law presented by the pleadings with respect to or involving the defendants Corning Glass Works, Empire Machine Company or the above-named individual defendants.

All of said defendants are ready and hereby consent to accept and submit to such decree of this Court as may be appropriate and necessary to preserve the presently established status of the parties as hereinabove described.

Wherefore, defendants consent and pray that a decree be entered in substantially the form set forth in Schedule "A" hereto annexed and hereby made a part of this Answer.

And the above named defendants pray that upon entry of the said decree by the Court a further order be entered dismissing the complaint as to said defendants in respect of each and every other issue in said action not provided for in the foregoing decree.

[fol. 576] McMahon, Webber & Hayward, By (signed) John B. McMahon, Franklin F. Hayward, Attorneys for Corning Glass Works, and Empire Machine Company and the defendants, Alanson B. Houghton, Amory Houghton, Arthur A. Houghton, Jr., Alexander D. Falck, Eugene C. Sullivan, William H. Curtiss, George D. Macbeth, Glen W. Cole, P. W. Jenkins, J. L. Peden, W. C. Decker, Arthur L. Day and George B. Hollister. Office and Post Office Address, 1333 Nicholas Building, Toledo, Ohio. (signed) John Lord O'Brian, of Counsel, 505 Iroquois Building, Buffalo, New York.

[fol. 577] SCHEDULE A TO SUPPLEMENTAL ANSWER OF CORNING GLASS WORKS, ET AL.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION

Civil Action No. 4426

UNITED STATES OF AMERICA, Plaintiff,

v.

HARTFORD-EMPIRE COMPANY, ET AL., Defendants

Consent Decree

United States of America filed its complaint herein on December 11, 1939, and the defendants Corning Glass Works and Empire Machine Company and the defendants Alanson B. Houghton, Amory Houghton, Arthur A. Houghton, Jr., Alexander D. Falck, Eugene C. Sullivan, William H. Curtiss, George D. Macbeth, Glen W. Cole, P. W. Jenkins, J. L. Peden, W. C. Decker, Arthur L. Day and George B. Hollis-

ter filed their answers on March 7, 1940, and their supplemental answer, pursuant to permission granted by this Court, on October 15, 1940. Each and all of the defendants asserting their innocence of any violation of law; and by their counsel having consented in open Court to the entry of this decree without any Findings of Fact,

And the petitioner by its counsel having accepted and consented to the entry of this decree,

And it appearing that by reason of the consents of the defendants to this decree and the acceptance of the same by the petitioner, it is unnecessary to proceed with the trial of the cause or to take testimony therein.

Now, therefore, without taking any testimony or evi- [fol. 578] dence and without making any Findings,

It is hereby ordered, adjudged and decreed as follows:

I. That the Court has jurisdiction of all of said persons and said parties hereto and, for the purposes of this decree and proceedings for the enforcement thereof, and for no other purpose, that the Court has jurisdiction of the subject matter hereof; and the petition states a cause of action against said defendants under Section 4 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraint and Monopolies," which act is commonly known as the "Sherman Anti-Trust Act," and under Section 15 of the Act of Congress of October 15, 1914, as amended, which act is commonly known as the "Clayton Act."

II. The defendants, Corning Glass Works and Empire Machine Company and their successors, officers, directors, employees, and agents, and each of them, are hereby perpetually enjoined and restrained from monopolizing, attempting to monopolize, combining or conspiring to monopolize, on contracting or combining or conspiring to restrain trade or commerce in violation of Sections 1 and 2 of the Sherman Act or Section 3 of the Clayton Act, and in particular with respect to—

(a) The manufacture and distribution of heat-resisting glassware,

(b) The manufacture and distribution of glass containers,

(c) The manufacture and distribution of milk bottles,

(d) The manufacture and distribution of fruit jars,

[fol. 579] (e) The manufacture and distribution of machinery for the production of glassware,

(f) Patents on automatic machinery for the production of glassware,

(g) Restrictions on the use of patents licensed or machinery leased by defendant, Hartford-Empire Company,

(h) The establishment and maintenance of prices for the sale of glassware.

III. Each of said defendants is further pe-petually enjoined and restrained from dominating or controlling or attempting to dominate or control the management of Hartford-Empire Company and from controlling or attempting to control the policies of that Company concerning the licensing by Hartford-Empire of other manufacturers of glassware machinery and glassware.

IV. Nothing herein contained shall be construed as enjoining or restraining the defendants, or any of them, from exercising lawfully any rights granted to any of them by virtue of the patent laws of the United States.

V. Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this decree to apply to the Court at any time and upon such notice as the Court may direct for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this decree or for the modification thereof or for the enforcement of compliance therewith or for the punishment of violations thereof.

————, United States District Judge.

[fol. 580] We hereby consent to the entry of the foregoing Decree,

For the Defendants Corning Glass Works, Empire Machine Company, Alanson B. Houghton, Amory Houghton, Arthur A. Houghton, Jr., Alexander D. Falck, Eugene C. Sullivan, William H. Curtiss, George D. Macbeth, Glen W. Cole, P. W. Jenkins, J. L. Peden, W. C. Decker, Arthur L. Day and George B. Hollister.

October 8, 1940.

McMahon, Webber & Hayward, By (signed) Franklin F. Hayward, Attorneys.

[fol. 581] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

SUPPLEMENTAL ANSWER OF DEFENDANT BALL BROTHERS COMPANY AND INDIVIDUAL DEFENDANTS ASSOCIATED THEREWITH —Filed October 18, 1940

The defendants, Ball Brothers Company, Frank C. Ball, George A. Ball, E. Arthur Ball, W. H. Ball, Edmund F. Ball, A. M. Bracken and Fred J. Petty, for their supplemental answer to plaintiff's complaint, herein aver that

1. Since the filing of said defendants' answer to the complaint herein, the defendant Ball Brothers Company has released R. R. Underwood, Knox Glass Bottle Company, Pennsylvania Bottle Company, Marienville Glass Company, Wightman Bottle and Glass Manufacturing Company and Oil City Glass Bottle Company from all obligations to it involving and relating to the manufacture and sale of fruit [fol. 582] jars including those arising out of the agreement of March 23, 1933 referred to in paragraph 151 of the complaint and in paragraph 57 of the answer, and aver further that such release extends to and includes all subsidiary and control companies, if any, of each of the above-named companies.

2. Since the filing of such answer, Ball Brothers Company has released the defendant, Brockway Glass Company, its president, Robert L. Warren, and all of its subsidiary and control companies from all obligations to it (Ball Brothers) involving and relating to the manufacture and sale of fruit jars including those arising out of an agreement executed on or about April 27, 1933 and referred to in paragraph 153 of the complaint and paragraph 59 of defendants' answer herein.

3. Since the filing of such answer the agreement of March 25, 1933 between Ball Brothers Company and the defendant Hartford-Empire Company (referred to in paragraph 155 of the complaint and paragraph 61 of the answer) has been amended and the defendant Hartford-Empire Company has been released from its obligation not to grant licenses under [fol. 583] United States Patents owned or controlled by it

for the manufacture of fruit jars, as defined in paragraph 4 of the answer; and Ball Brothers Company has been released from its obligation not to sell inventions relating to glass feeding machines and/or glass feeding methods without first offering the same to Hartford-Empire Company.

(S) E. W. McCallister, Wilber Owen, Carl F. Schaffer, Attorneys for Ball Brothers Company. Frank C. Ball, George A. Ball, E. Arthur Ball, W. H. Ball, Edmund F. Ball, A. M. Bracken and Fred J. Petty.

ORDER

It is ordered that the above Supplemental Answer be filed as of October 18, 1940.

Frank L. Kloeb, United States District Judge.

[fol. 584] [File endorsement omitted]

[Title omitted]

IN UNITED STATES DISTRICT COURT

SUPPLEMENTAL ANSWER OF HARTFORD-EMPIRE COMPANY ET AL.—Filed October 18, 1940

The defendants Hartford-Empire Company (sometimes hereinafter referred to as "Hartford"), F. Goodwin Smith, Bartlett Arkell, Robson D. Brown, John C. Hostetter, Roger M. Eldred, Karl E. Peiler, Arthur T. Safford, Jr., Theodore L. Champeau, and A. M. Pease, by their attorneys, said defendants being hereinafter referred to collectively as "these defendants," for their supplemental answer to the com-
[fol. 585] plaint herein, aver as follows:

1. Since the filing of these defendants' answer to the complaint herein, Hartford has irrevocably removed from its existing license and lease agreements all limitations mentioned in the statement of "Practices complained of" by said Hartford-Empire Company, heretofore furnished at the direction of the court by counsel for plaintiff and complained of in the complaint, including limitations as to

(a) The type or kind of glassware which can be produced by each licensed glassware manufacturer;

(b) The use of the product manufactured;

(c) The character of the glassware that may be manufactured, as to (1) weight, (2) color, (3) capacity, and (4) composition;

(d) The quantity of glassware which may be produced;

(e) The market for the glassware, including (1) customers or class of customers and (2) territory;

(f) Transfer to Hartford-Empire Company of licensees' patent rights covering changes in, or additions to, the licensed machinery. New *con-* contracts being made with the licensees of Hartford-Empire Company provide for the conveyance to Hartford-Empire Company of non-exclusive licenses only, under such patent rights.

(g) The number of feeding machines that may be used by the licensee;

(h) So-called "tying clauses" in license agreements. The only such clause existing in current agreements, and now canceled, has provided a limitation of the use of certain Hartford-Empire forming machines to use with feeders licensed by the Hartford-Empire Company.

[fol. 586] Hartford's licensees have been notified by letter of said removal of limitations, a copy of said letter being annexed hereto, marked Schedule A, and hereby made a part of this Supplemental Answer. Supplemental agreements are being sent forthwith to said licensees to effect said removal of limitations.

2. The said supplemental agreements hereinbefore referred to include a covenant that Hartford will supply to its licensees whose financial situation is reasonably satisfactory as many of its standard feeders, forming machines, lehrs, stackers and conveyors as they may require, on license fees, royalties and other terms currently established and in effect at the time they are supplied.

3. Since the filing of these defendants' original answer to the complaint herein, Hartford and the companies named

below have canceled and terminated the following agreements:

(a) The agreement dated June 30, 1916, between defendant Empire Machine Company and Hartford-Fairmont Company (predecessor of defendant Hartford-Empire Company), referred to in paragraph 41 of the complaint.

(b) The agreement dated October 6, 1922, between Hartford-Fairmont Company and defendants Corning Glass Works, Empire Machine Company and Hartford-Empire Company, known as "Agreement Relating to Patent Rights and Formulas," referred to in paragraph 43 of the complaint.

(c) All amendments of the aforesaid agreements dated June 30, 1916, and October 6, 1922.

(d) The agreement dated August 23, 1933, between Hartford and Lynch Corporation, referred to in paragraph 111 of the complaint. A new agreement between Hartford and Lynch Corporation has been executed on or about September 19, 1940.

[fol. 587] The effect of said cancellations is that

(a) Said cancellation of the agreements of June 30, 1916, and of October 6, 1922, as amended, between Hartford, Corning Glass Works and others, enables Hartford to grant, and it is granting, by the supplemental agreements referred to in paragraph 1 hereof, to its other licensees the right to use machinery and methods of Hartford in the manufacture of all kinds of glassware for which Corning Glass Works or Empire Machine Company have heretofore held exclusive rights in any of Hartford's inventions by reason of said agreements. Likewise, said cancellation enables Corning Glass Works to grant licenses to use inventions, machinery and methods of Corning Glass Works in the manufacture of all kinds of glassware for which Hartford has heretofore held exclusive rights in any of Corning Glass Works' inventions.

(b) Said cancellation of the agreement of August 23, 1933, between Hartford and Lynch Corporation, and the new agreement between said parties hereinbefore referred to, has removed the sole limitation theretofore existing as to the terms upon which said Lynch Corporation may sell

forming machines embodying Hartford's inventions, that is, said Lynch Corporation is now permitted to sell all types of its forming machines embodying the Hartford inventions under which Lynch Corporation is licensed, without requiring the purchasers of such machines to enter into forming machine license agreements with Hartford. Under said new agreement, the Lynch Corporation will hereafter pay to Hartford a nominal license fee for each such machine so sold by said Lynch Corporation.

4. Since the filing of these defendants' answer to the complaint herein, the defendants Hartford and Ball Brothers Company have entered into a new agreement dated as of [fol. 588] August 1, 1940, whereby Hartford has reacquired from said Ball Brothers Company the residual rights for the manufacture of fruit jars for domestic (household) use theretofore held by said Ball Brothers Company under a certain General Feeder License Agreement between Hartford and Ball Brothers Company, dated March 25, 1933, referred to in paragraph 154 of the complaint. Under the provisions of said new agreement between Hartford and Ball Brothers Company, Hartford is now in a position to grant, and is granting, by the supplemental agreements referred to in paragraph 1 hereof, to its other licensees the right to use glass feeders, as well as other machinery, covered by Hartford-Empire Company's patents, for the manufacture of fruit jars for domestic (household) use.

5. No person, firm or corporation now holds any exclusive right under any patents or inventions of Hartford on glass-making machinery except as follows:

(a) American Thermos Bottle Company's rights, exclusive for a limited time, to use certain machines of Hartford in the manufacture of parts for thermos bottles which constitute a very minor portion of the glassware industry. These defendants are advised, and therefore allege, that the American Thermos Bottle Company is willing to relinquish these rights, and a formal agreement is being prepared to accomplish that result.

(b) Limited exclusive rights held by Federal Glass Company and by Anchor Hocking Glass Corporation of Pennsylvania (as successor to Capstan Glass Company), both relating to the use of glass feeders of a particular and little-

used construction, known as Tucker & Reeves flaming-cup feeders, in the manufacture of specified articles. These defendants are advised, and therefore allege, that both Federal Glass Company and Anchor Hocking Glass Corpora-
[fol. 589] tion of Pennsylvania have agreed informally to the elimination of said exclusive rights. Formal agreements are being drawn to accomplish this.

(c) Thatcher Manufacturing Company's exclusive rights to the use of one type of milk bottle forming machine, known as a "milk bottle machine." The release of these rights is a matter for the Thatcher Company's decision. The machine, however, is an outmoded type, not at all necessary for the manufacture of milk bottles, which are made by the Thatcher Company's competitors on more modern machines.

6. When the supplemental agreements between Hartford and its licensees, referred to in paragraph 1 hereof, are executed by the lessees of Hartford equipment to whom they are being sent, there will be no "tying clauses" in any of Hartford's agreements requiring any licensed machine to be used in association with any other licensed machine.

7. Since the filing of these defendants' answers to the complaint herein, the board of directors of Hartford has adopted the following resolution:

"That hereafter the company shall grant leases covering its glass-working equipment, of then standard types or any improvements thereon, and the right to use the same, similar in terms and extent to its then current license and lease agreements, to any applicant for such leases whose primary business is the manufacture of glassware; provided that the applicant conforms to such standards and requirements as may be prescribed by the officers of the company to insure that, with regard to financial and kindred considerations, the applicant, when granted such a license, will have reasonable prospects of continuing in the glass business."

[fol. 590] This has been the policy of Hartford for some time, and the present licensees of Hartford have been notified that Hartford is prepared to grant such new licenses.

8. The supplemental agreements between Hartford and its licensees, referred to in paragraph 1 hereof, include all

the provisions that may be necessary in any particular instances to insure that all clauses relating to the validity of patents be in substantially the following form:

"So long as this License remains in force, the Licensee agrees not to dispute the validity of the Letters Patent under which this License is granted, some of which are set forth in Schedule —— annexed hereto (or set forth herein) so far as these patents apply to the methods and machines which are hereby licensed to the Licensee."

Said form is now, and has been for some time past, used in Hartford's license and lease agreements. This form, as these defendants are advised, and therefore allege, expresses only what is required of a licensee by law in respect to the validity of patents under which a licensee is licensed.

9. By reason of the foregoing facts, there is now no genuine issue as to any material fact or issue of law presented by the pleadings with respect to, or involving, the matters herein referred to, to-wit:

(a) Limitations in licenses granted by Hartford under any of its patents on glass-working machinery;

(b) Exclusive rights in any inventions of Hartford relating to glass-working machinery;

(c) The furnishing of additional standard equipment by Hartford to its licensees;

[fol. 591] (d) Limitation of the right of Lynch Corporation to sell glassware forming machines covered by patents of Hartford;

(e) So-called "tying clauses" requiring any licensed machine to be used in association with any other licensed machine;

(f) Granting of leases of Hartford machinery to responsible newcomers applying therefor;

(g) Acknowledgment of validity of patents beyond what is required by law;

and there is no possibility of Hartford hereafter exercising any unlawful restraint of trade or commerce, or any restraint whatever, either upon the glass industry or any part

thereof, or upon the manufacture, sale or leasing of glass-making machinery except such as it lawfully has by virtue of its ownership of patents and patent rights; and there is thus no genuine issue as to any material fact or issue of law presented by the pleadings with respect to or involving any such restraints of trade or commerce.

10. These defendants are ready, and hereby consent, to accept and submit to a decree substantially in the form set forth in Schedule B hereto annexed and hereby made a part of this Supplemental Answer, or to such modification thereof as may be decreed by this court to be appropriate and necessary to preserve the presently established status of Hartford's licenses and licensing procedure, as hereinabove described.

Wherefore, in addition to the prayers of their original answer, these defendants pray

1. That a decree be entered in substantially the form set forth in Schedule B hereto annexed.

[fol. 592] 2. That upon entry of the said decree by the court, a further order be entered limiting and narrowing the issues for trial in this cause to such issues as are not disposed of by the entry of the said decree.

E. J. Marshall, Stuart S. Wall, Nicholas Bldg., Toledo, Ohio, Attorneys for the Within Named Defendants.

Of Counsel: Thomas G. Haight, 15 Exchange Place, Jersey City, N. J. Edgar J. Goodrich, Investment Bldg., Washington, D. C.

[fol. 593] SCHEDULE A TO ANSWER OF HARTFORD-EMPIRE CO. ET AL.

October 8, 1940.

GENTLEMEN:

As you know, this company's licensing policy is under direct attack by the government in the antitrust suit brought by the Department of Justice against Hartford-Empire Company and several glass manufacturing companies.

We believe that the policy which we have developed and followed over a period of years has been entirely proper and legal, but the government's attitude leads us to make some changes in this policy. Therefore, our board of directors has today voted to make certain changes.

One of these changes relates to the "Permitted Ware" and "Exclusions" appearing in our existing license and lease agreements. We are removing all restrictions and exclusions from the "Permitted Ware" schedules, and will shortly send to you an agreement which will amend your present contracts in this respect.

This amendment means that you will hereafter be permitted to use your Hartford licensed and leased machinery to manufacture glass containers and glassware generally without limitations as to type, use, quantity, market, weight, capacity, color or composition.

Another of these changes relates to Hartford's furnishing of equipment to its licensees. Hereafter we agree to supply as much of our standard leased equipment as a licensee may require for his glassware production, provided his financial status is satisfactory.

[fol. 594] A third change relates to patent rights acquired by a licensee covering changes and additions to the leased machinery. The agreement which will be sent to you shortly will include a provision that such patent rights shall not be transferred to Hartford, but that Hartford shall have merely a non-exclusive, transferable and divisible license under such patent rights.

A fourth change, applicable to such of your license agreements as relate to Hartford I. S. machines, will remove the requirement, heretofore contained in such agreements, that feeders licensed by Hartford be used in the feeding of such machines.

We have also made arrangements whereby Lynch Corporation may sell its machines without the necessity of the purchaser securing a forming machine license from Hartford.

One of the fundamental issues involved in the before mentioned suit is the claim by the government that Hartford has exercised an undue power in the selection of licensees. With this we do not concur. We have granted licenses in the past and are prepared to grant new licenses in the future to newcomers who, with due regard to financial and kindred considerations, may be reasonably expected

to continue in the glass business. A more concrete formula may be announced later.

We wish to impress upon you that this action has been taken only after the most serious and careful consideration of all the factors mutually involved.

Very truly yours, Hartford-Empire Company, by ——— ———.

[fol. 595] SCHEDULE B TO ANSWER OF HARTFORD-EMPIRE CO. ET AL.

In the District Court of the United States for the Northern District of Ohio, Western Division

No. 4426

UNITED STATES OF AMERICA, Plaintiff,

vs.

HARTFORD-EMPIRE COMPANY et al., Defendants

Consent Decree as to Certain Issues

The United States of America filed its complaint herein on or about December 11, 1939; each of the defendants named in the complaint (other than William H. Honiss and George F. Collins, both of whom are deceased, and R. H. Levis, as to whom as well as the defendant Ben F. Hazelton, Jr., the complaint has been dismissed) appeared and filed answers to the complaint and asserted the truth of their answers and their innocence, respectively, of any violation of law.

No testimony having been taken, and each of the defendants against whom relief is granted in this decree having consented to the entry of this decree without any findings of fact, upon condition that neither such consent nor this decree shall be considered an admission or adjudication that it or he has violated any statute;

[fol. 596] It is therefore ordered, adjudged and decreed, as follows:

1. That the court has jurisdiction of all said persons and parties hereto; and for the purposes of this decree and proceedings for the enforcement thereof, and for no other pur-

pose, that the court has jurisdiction of the subject matter hereof and the complaint states a cause of action against the defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," said Act being commonly known as the "Sherman Anti-Trust Act," and under Section 3 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 730, as amended, said Act being commonly known as the "Clayton Act."

2. That this action be severed as to all claims set forth in the complaint, in respect of which injunctive relief (both prohibitory and mandatory) is herein granted; and that a judgment and decree be entered by consent, as hereinabove stated, as to all of the matters, issues and claims for relief, as to which an injunction is granted in paragraphs 3 to 7, inclusive, of this decree, and that as to any other matters, issues and claims for relief that may remain, this action may be continued against the said defendants. The entry of this decree shall not be held to estop or limit the rights of the plaintiff or of any other party in the presentation of evidence material, relevant and competent to the issues as to which this case is continued.

3. The defendant, Hartford-Empire Company, its successors, officers, directors, managers, employees and agents, and each of them, and the individual defendants, F. Good-[fol. 597] win Smith, Bartlett Arkell, Alexander D. Falck, Robson D. Brown, J. C. Hostetter, Roger M. Eldred, Karl E. Peiler, Arthur T. Safford, Jr., Theodore L. Champeau, A. M. Pease, Amory Houghton, Arthur A. Houghton, Jr., and Alanson B. Houghton, so far as they may act as officers, directors, managers, employees or agents of said Hartford-Empire Company, are hereby perpetually restrained and enjoined from doing the acts prohibited, and ordered to do the acts directed, in this paragraph 3 of this decree, viz.:

(a) from asserting, insisting upon, attempting to enforce or including any limitations in any lease of glass-making machinery made or to be made by Hartford-Empire Company, which relate to (1) the type or kind of glassware which can be produced with or upon machines or equipment leased by Hartford-Empire Company, (2) the use of such product so produced, (3) the character, weight, color, capac-

ity or composition of glassware so produced, (4) the quantity thereof so produced, and (5) the market (either as to territory, customers or class of customers) to or in which the same may be sold or distributed; and from asserting, insisting upon or attempting to enforce any of the foregoing limitations in any agreements now existing between Hartford-Empire Company and others by which the latter are respectively licensed to use certain machinery which is not leased to them by Hartford-Empire Company;

(b) from asserting, insisting upon, or attempting to exercise or enforce any clause or provision of any lease made by Hartford-Empire Company, and now existing, which limits or restricts, or purports to limit or restrict, the use of any machinery or equipment leased by Hartford-Empire Com-[fol. 598] pany to use in connection with any other machinery or equipment furnished, leased or licensed by it, or which gives or purports to give Hartford-Empire Company a right to terminate any lease if any machinery or equipment is not so used, and from including any such provision in any lease agreement hereafter granted by Hartford-Empire Company;

(c) from asserting or claiming any title, right or interest in, to or under any patent rights possessed by any lessee of Hartford-Empire Company covering changes and additions in and subtractions from glass-making machinery or equipment leased by it, by virtue of any clause or provision in any lease now existing, exceeding or except a non-exclusive, divisible, transferable, royalty-free license thereunder; and from including any provision for a greater right in any lease agreement given by Hartford-Empire Company;

(d) from including any provision in any license or lease agreement hereafter granted by Hartford-Empire Company, and from asserting any right under or attempting to enforce any provision of any license or lease agreement now existing given by it, which binds any lessee or licensee not to contest the validity of any Letters Patent of Hartford-Empire Company, to an extent greater than is expressed in the following language, viz.:

"So long as this License remains in force, the Licensee agrees not to dispute the validity of the Letters Patent under which this License is granted, some of which are set forth in Schedule —— annexed hereto (or set forth

herein) so far as these patents apply to the methods and machines which are hereby licensed to the Licensee";

[fol. 599] (e) to supply and lease to lessees and licensees of Hartford-Empire Company from time to time as many of its then leased standard glass feeding machines, glass forming machines, glass annealing lehrs, glassware stackers and conveyors, as they respectively may require, on license fees, royalties and other terms currently established and in effect at the time they are supplied; provided that the applicant's then financial situation is reasonably satisfactory; and any such applicant to whom Hartford-Empire Company may refuse to supply and lease such machines or equipment in violation of this subparagraph (3) shall have the right to apply to this court for an order requiring the Hartford-Empire Company to comply herewith;

(f) to supply and grant leases covering its then standard glass-making machinery and equipment, similar in terms and extent to the then current leases of Hartford-Empire Company, to any applicant therefor whose primary business is to be the manufacture of glassware and sale therof to the consuming public generally, and who shall conform to such reasonable standards and requirements as may be prescribed by Hartford-Empire Company, to insure that, with regard to financial and kindred considerations, the applicant, when granted a license, may reasonably be expected to continue in the glass manufacturing business for a substantial length of time; leases to such applicants to conform to the requirements set forth in subparagraphs (a) to (d), inclusive, of this paragraph 3; and any such applicant to whom Hartford-Empire Company may refuse to grant any such lease shall have the right to apply to this court for an order requiring said defendant to grant such [fol. 600] lease, which order shall be granted if the court finds that such lease was wrongfully refused in violation of this decree;

(g) from combining, conspiring or agreeing with any other defendants hereto, or with any other person or persons, to monopolize or attempt to monopolize glass-making machinery or patents thereon, or from acquiring by purchase or similar means any patent or exclusive rights

thereunder covering glass-making machinery, which patent in itself covers machinery which would compete with patented glass-making machinery then being furnished by Hartford-Empire Company; but nothing contained in this subparagraph (g) shall be construed to prevent Hartford-Empire Company or any individual defendant named in this paragraph 3 from acquiring patents or rights thereunder, which cover improvements upon then existing patents or machinery of Hartford-Empire Company. The right is hereby reserved to Hartford-Empire Company to apply to this court for permission to purchase any patent, improvement or otherwise, which it may be necessary or desirable for Hartford-Empire Company to acquire in order to terminate an interference, to settle or avoid patent infringement or similar litigation, or in order to permit the advancement of the commercial glass-making art; and the court reserves jurisdiction to grant such permission;

(h) from inducing or influencing, and from attempting to induce or influence, any other defendant hereto or any other person or persons to refrain from assigning, or from granting rights or licenses under, any patents or patent rights of such other defendant or other person;

(i) from directly or indirectly combining, conspiring or agreeing with any other defendant hereto, or with any other [fol. 601] person or persons, to limit or restrict the production of any glass products or to agree upon, fix or maintain the prices at which the same may be sold or distributed.

4. The defendants, Hartford-Empire Company and Ball Brothers Company, their respective successors, officers, managers, employees and agents and each of them, the defendant directors and officers of Hartford-Empire Company above named, and the defendant directors and officers of Ball Brothers Company, viz.: Frank Clayton Ball, George A. Ball, E. Arthur Ball, Edmund F. Ball, A. M. Bracken and Fred J. Petty (in so far as said individual defendants may act as officers, directors, managers, employees or agents of said corporate defendants, respectively) are perpetually enjoined and restrained from reorganizing or asserting that any right or license from Hartford-Empire Company to Ball Brothers Company, including any right or license in or under the agreement between them entered into under date of March 25, 1933

(which agreement is referred to in paragraph numbered 154 of the complaint) are exclusive, or exclusive except as to pre-existing rights of or licenses to others, and from recognizing or asserting any agreement, promise or obligation in or under said agreement or otherwise on the part of Hartford-Empire Company not to grant any other right or license for the manufacture of fruit jars for domestic (household) use upon or with machinery or equipment furnished or licensed by Hartford-Empire Company; and from recognizing or asserting any agreement, promise or obligation on the part of Ball Brothers Company not to sell any of its glass feeder inventions or any of its glass feeders [fol. 602] which are not at the time of sale covered by any of Hartford-Empire patents, without first offering the same to Hartford-Empire Company.

5. The defendants, Hartford-Empire Company and Lynch Corporation, their respective successors, officers, managers, employees and agents and each of them, the defendant directors and officers of Hartford-Empire Company above named, the defendant directors and officers of Lynch Corporation, viz.: Thomas Chandler Werbe, E. G. Bridges, A. G. Doll, J. L. Watts, Uz McMurtrie, and N. M. McCullough (in so far as said individual defendants may act as officers, directors, managers, employees or agents of said corporate defendants, respectively) are perpetually enjoined and restrained from recognizing, performing or asserting any rights under any provison of any agreement, including the agreement between said corporate defendants entered into under date of August 23, 1933, as amended (which agreement is referred to in paragraph numbered 114 of the complaint) which limits or restricts the terms upon which, or the customers to whom, Lynch Corporation may sell glass forming machines embodying or employing inventions of or owned by Hartford-Empire Company, under which Lynch Corporation is licensed, or which requires purchasers of such machines from Lynch Corporation to enter into forming machine license agreements with Hartford-Empire Company.

6. The defendants, Hartford-Empire Company, Corning Glass Works and Empire Machine Company, their respective successors, officers, managers, employees and agents and each of them, the defendant directors and officers of

Hartford-Empire Company above named, the defendant [fol. 603] directors and officers of Corning Glass Works, viz.: Alexander D. Falck, Eugene C. Sullivan, Amory Houghton, Arthur A. Houghton, Jr., William H. Curtiss, George D. Macbeth, Glen W. Cole, P. W. Jenkins, J. L. Pedan, W. C. Decker, Alanson B. Houghton, John L. Thomas, George B. Hollister, and Arthur L. Day, and the defendant directors and officers of Empire Machine Company, viz.: Alexander D. Falck, Alanson B. Houghton, Amory Houghton, Arthur L. Day, and Arthur A. Houghton, Jr. (in so far as said individual defendants may act as officers, directors, managers, employees or agents of said corporate defendants respectively) are perpetually enjoined and restrained:

(a) from recognizing as exclusive and from asserting to be exclusive any right or license granted by Hartford-Empire Company or by its predecessor, Hartford-Fairmont Company, to Empire Machine Company or to Corning Glass Works, in or under an agreement between said Hartford-Fairmont Company and Empire Machine Company under date of June 30, 1916 (which agreement is referred to in paragraph numbered 41 of the complaint) and in or under an agreement between said Hartford-Fairmont Company, Hartford Empire Company, Corning Glass Works and Empire Machine Company under date of October 6, 1922, entitled "Agreement Relating to Patent Rights and Formulas" (which agreement is referred to in paragraph numbered 43 of the complaint);

(b) from recognizing as exclusive and from asserting to be exclusive any license granted by Corning Glass Works or Empire Machine Company to Hartford-Empire Company or to its predecessor, Hartford-Fairmont Company, [fol. 604] by either of said contracts identified in subparagraph (a) of this paragraph 6.

7. The defendant, Hartford-Empire Company, is perpetually enjoined and restrained from owning or holding, directly or indirectly, any shares of stock, bonds or evidence of indebtedness of any of the other corporate defendants hereto.

8. Jurisdiction of this cause, as to the matters upon which relief is hereinabove granted, is retained for the purpose

(but only for the purpose) of enabling either the plaintiff or any of the defendants against whom such relief is granted, to apply to this court at any time for such further orders and directions as may be necessary or appropriate for the modification, construction or carrying out of this decree, for the enforcement or compliance therewith, and for the punishment of violations thereof.

—— ——, District Judge.

[fol. 605] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

SUPPLEMENTAL ANSWER OF DEFENDANTS LYNCH CORPORATION, THOMAS CHANDLER WERBE, E. G. BRIDGES, A. G. DOLL, J. L. WATTS, UZ MCMURTRIE AND N. M. MCCULLOUGH—Filed October 18, 1940

By way of supplemental answer to the plaintiff's complaint herein, the defendants Lynch Corporation, Thomas Chandler Werbe, E. G. Bridges, A. G. Doll, J. L. Watts, Uz McMurtrie and N. M. McCullough, allege and say that since the filing of the answer of these defendants herein, to-wit: on September 18, 1940, the defendant Lynch Corporation and the defendant Hartford-Empire Company entered into a certain written contract, by the terms of which the contract between said parties dated August 23, 1933, referred to in paragraphs 114, 115, 116, 117 and 118 of the complaint and in paragraphs 34 and 36 of the answer of these defendants, and all modifications and supplements thereto, were cancelled and terminated.

They further aver that by said contract of September 18, 1940, Lynch Corporation granted to Hartford-Empire Company "a non-exclusive license under Lynch licensed forming machine inventions to make for itself or have made for it, to sell and lease forming machines of designs made or acquired by Hartford embodying Lynch licensed forming machine inventions and to license others to use, but not to make and/or sell, any forming machines embodying Lynch licensed forming machine inventions", and Hartford-Empire Company granted to Lynch "a non-exclusive license

under Hartford licensed forming machine inventions to make and sell, and license others to use, but not to make and/or sell forming machines of designs made or acquired by Lynch and embodying Hartford licensed forming machine inventions".

[fol. 606] They further aver that neither Hartford nor Lynch retained any right, nor has either any right to direct or control to whom or for what purposes the other may sell its forming machines, but that both said defendants are free and have the right to, and do offer for sale and sell their respective forming machines to whomsoever, for such purposes, and upon such terms and conditions as they respectively choose.

Wherefore, these answering defendants pray that as to them the complaint be dismissed with costs.

Pence, O'Neill & Diven, Doyle & Lewis, Attorneys for Defendants Lynch Corporation, Thomas Chandler Werbe, E. G. Bridges, A. G. Doll, J. L. Watts, Uz McMurtrie and N. M. McCullough.

Of Counsel: Albert Diven, Lohr Fess, Anderson Bank Building, Anderson, Indiana.

[fol. 607] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF F. GOODWIN SMITH—Filed October 15, 1940

STATE OF OHIO,
County of Lucas, ss:

F. Goodwin Smith, being duly sworn, deposes and says:

1. That he is the President of Hartford-Empire Company, a defendant in the above-entitled cause.

Removal of Limitations from Licenses

2. That, in so far as said Hartford-Empire Company is legally able, by reason of outstanding contracts, the Hartford-Empire Company is irrevocably removing, from its [fol. 608] existing license and lease agreements, all limita-

tions mentioned in the statement of "Practices complained of" by said Hartford-Empire Company, heretofore furnished by counsel for plaintiff, including limitations as to

(a) The type or kind of glassware which can be produced by each licensed glassware manufacturer

(b) The use of the product manufactured

(c) The character of the glassware that may be manufactured, as to (1) weight, (2) color, (3) capacity, and (4) composition

(d) The quantity of glassware which may be produced

(e) The market for the glassware, including

(1) customers or class of customers and

(2) territory

(f) Transfer to Hartford-Empire Company of licensees' patent rights covering changes in, or additions to, the licensed machinery. New contracts being made with the licensees of Hartford-Empire Company provide for the conveyance to Hartford-Empire Company of non-exclusive licenses only, under such patent rights

(g) The number of feeding machines that may be used by the licensee

(h) The limitation of the use of Hartford-Empire forming machines to use with feeders licensed by the Hartford-Empire Company.

3. That said removal of limitations has been effected by resolutions of the Board of Directors of Hartford-Empire Company, pursuant to which letters are being sent to the licensees of Hartford-Empire Company in the form of the attached paper marked "Exhibit No. 1"; and that supplemental agreements removing said limitations, in accordance [fol. 609] with said letter, Exhibit No. 1, are being prepared to be sent to the licensees of Hartford-Empire Company, said supplemental agreements being substantially in the form of the attached paper marked "Exhibit No. 2".

Furnishing Additional Machines to Licensees

4. That in the attached letter, Exhibit No. 1, and in the attached agreement, Exhibit No. 2, Hartford-Empire Company is agreeing and will agree with its licensees to supply them with as many of its standard feeders, forming machines, lehrs, stackers and conveyors as they may require,

on license fees, royalties and other terms currently established and in effect at the time they are supplied.

5. That, in order to enlarge the legal rights of Hartford-Empire Company to remove limitations from its license and lease agreements, the Board of Directors of said Hartford-Empire Company has authorized, and there have been executed, the following agreements relating to matters involved in said cause:

(a) An agreement between Hartford-Empire Company and Lynch Corporation, a defendant in said cause, canceling the license agreement theretofore existing between the [fol. 610] Hartford and Lynch companies, and removing the sole limitation theretofore existing as to the terms upon which the Lynch Corporation may sell forming machines embodying Hartford-Empire inventions, that is, so as to permit said Lynch Corporation to sell its licensed narrow-neck bottle-forming machines covered by patents of Hartford-Empire Company, without requiring the purchasers of such machines to enter into forming machine license agreements with Hartford-Empire Company. Under said new agreement, the Lynch Corporation will hereafter pay to Hartford-Empire Company a nominal license fee for each such narrow-neck forming machine so sold by said Lynch Corporation;

(b) An agreement between Hartford-Empire Company and Ball Brothers Company, a defendant in said cause, whereby Hartford-Empire Company has re-acquired from said Ball Brothers Company the residual rights for the manufacture of fruit jars for domestic (household) use, heretofore held by said Ball Brothers Company under a certain General Feeder License Agreement between said Hartford-Empire Company and said Ball Brothers Company, dated March 25, 1933, so that Hartford-Empire Company is now in a position to grant, and is granting, to its other licensees the right to use glass feeders covered by Hartford-Empire Company's patents in the manufacture of fruit jars for domestic (household) use;

and that, in addition, there has been verbally agreed to, but not yet signed:

(c) An agreement between Hartford-Empire Company and Corning Glass Works, a defendant in said cause,

whereby a certain agreement, dated June 30, 1916, between Hartford-Fairmont Company (predecessor of Hartford-Empire Company) and Empire Machine Company, and a certain agreement between Hartford-Empire Company, [fol. 611] Corning Glass Works, Hartford-Fairmont Company and Empire Machine Company, dated October 6, 1922, as amended, have both been canceled. Said cancellation enables Hartford-Empire Company to grant, and it is granting, to its other licensees the right to use inventions, machinery and methods of Hartford-Empire Company in the manufacture of all kinds of glassware for which Corning Glass Works has heretofore held exclusive rights in any of Hartford-Empire Company's inventions. Likewise, said cancellation enables Corning Glass Works to grant licenses to use inventions, machinery, and methods of Corning Glass Works in the manufacture of all kinds of glassware for which Hartford-Empire Company has heretofore held exclusive rights in any of Corning Glass Works' inventions.

Remaining Exclusive Rights in Hartford-Empire Inventions

6. That since the said agreements have been made with Corning Glass Works and with Ball Brothers Company, referred to in Paragraphs 5 (b) and (c) hereof, no person, firm or corporation holds any exclusive right under any patents or inventions of Hartford-Empire Company on glassworking machinery, except as follows:

(a) American Thermos Bottle Company's rights, exclusive for a limited time, to use certain machines of Hartford in the manufacture of parts for thermos bottles which constitute a very minor portion of the glassware industry. Deponent is advised that the American Thermos Bottle Company is willing to relinquish these rights, and a formal agreement is being prepared to accomplish that result.

[fol. 612] (b) Limited exclusive rights held by Federal Glass Company and by Anchor Hocking Glass Corporation of Pennsylvania (as successor to Capstan Glass Company), both relating to the use of glass feeders of a particular and little-used construction, known as Tucker & Reeves flaming-cup feeders, in the manufacture of specified articles. Deponent is advised that both Federal Glass Company and Anchor Hocking Glass Corporation of Pennsylvania have

agreed informally to the elimination of said exclusive rights. Formal agreements are being drawn to accomplish this.

(c) Thatcher Manufacturing Company's exclusive rights to the use of one type of milk bottle forming machine, known as a "milk bottle machine". The release of these rights is a matter for the Thatcher Company's decision. The machine, however, is an outmoded type, not at all necessary for the manufacture of milk bottles, which are made by the Thatcher Company's competitors on more modern machines.

Removal of So-called Tying Clauses

7. That when the supplemental agreements referred to in Paragraph 3 hereof are executed, there will be no "tying clauses" in any of the Hartford-Empire Company's agreements, requiring any licensed machine to be used in association with any other licensed machine.

[fol. 613] Licenses to New Applicants

8. That the Board of Directors of Hartford-Empire Company, on October 8, 1940, adopted the following resolution:

"That hereafter the Company shall grant leases covering its glass-working equipment, of then standard types or any improvements thereon, and the right to use the same, similar in terms and extent to its then current license and lease agreements, to any applicant for such leases whose primary business is the manufacture of glassware; provided that the applicant conforms to such standards and requirements as may be prescribed by the officers of the Company to insure that, with regard to financial and kindred considerations, the applicant, when granted such a license, will have reasonable prospects of continuing in the glass business."

that this has been the policy of the Hartford-Empire Company for some time; and that the present licensees of Hartford-Empire Company have been notified, in the attached letter, Exhibit No. 1, that Hartford-Empire Company is prepared to grant such new licenses.

Acknowledging Validity of Patents

9. That instructions have been given to include, in the Supplemental Agreements referred to in Paragraph 3

hereof, any provisions that may be found necessary in par-
[fol. 614] ticular instances, to insure that all clauses relating to the validity of patents be in the form now used in Hartford-Empire license and lease agreements, which form, as deponent is advised, expresses only what is required of a licensee by law, in respect to the validity of patents under which a licensee is licensed.

Agreement with Hazel-Atlas Glass Company

10. That Hartford-Empire Company is willing, and desires for business reasons, that its existing agreement with Hazel-Atlas Glass Company, a defendant in the above-entitled cause, be modified to eliminate the participation of Hazel-Atlas Glass Company in Hartford-Empire Company's income, provided that such modification, if agreed to between the Hartford-Empire and Hazel-Atlas companies, is approved by the Court and disposes of said agreement as a question in this cause.

(Signed) F. Goodwin Smith.

Subscribed and sworn to before me this 15th day of October, 1940. (Signed) G. M. Reswick, Notary Public. My commission expires Jan. 13, 1943. (Seal.)

[fol. 615] EXHIBIT No. 1 TO AFFIDAVIT OF F. GOODWIN SMITH

October 8, 1940.

GENTLEMEN:

As you know, this company's licensing policy is under direct attack by the Government in the Antitrust suit brought by the Department of Justice against Hartford-Empire Company and several glass manufacturing companies.

We believe that the policy which we have developed and followed over a period of years has been entirely proper and legal, but the Government's attitude leads us to make some changes in this policy. Therefore, our Board of Directors has today voted to make certain changes.

One of these changes relates to the "Permitted Ware" and "Exclusions" appearing in our existing license and lease agreements. We are removing all restrictions and exclusions from the "Permitted Ware" schedules, and will shortly send to you an agreement which will amend your present contracts in this respect.

This amendment means that you will hereafter be permitted to use your Hartford licensed and leased machinery to manufacture glass containers and glassware generally without limitations as to type, use, quantity, market, weight, capacity, color or composition.

Another of these changes relates to Hartford's furnishing of equipment to its licensees. Hereafter we agree to supply as much of our standard leased equipment as a licensee may require for his glassware production, provided his financial status is satisfactory.

A third change relates to patent rights acquired by a licensee covering changes and additions to the leased machinery. The agreement which will be sent to you shortly will include a provision that such patent rights shall not be transferred to Hartford, but that Hartford shall have merely a non-exclusive, transferable and divisible license under such patent rights.

[fol. 616] A fourth change, applicable to such of your license agreements as relate to Hartford I. S. machines, will remove the requirement, heretofore contained in such agreements, that feeders licensed by Hartford be used in the feeding of such machines.

We have also made arrangements whereby Lynch Corporation may sell its machines without the necessity of the purchaser securing a forming machine license from Hartford.

One of the fundamental issues involved in the before mentioned suit is the claim by the Government that Hartford has exercised an undue power in the selection of licensees. With this we do not concur. We have granted licenses in the past and are prepared to grant new licenses in the future to newcomers who, with due regard to financial and kindred considerations, may be reasonably expected to continue in the glass business. A more concrete formula may be announced later.

We wish to impress upon you that this action has been taken only after the most serious and careful consideration of all the factors mutually involved.

Very truly yours, Hartford-Empire Company. By ——— ———.

———

[fol. 617] Exhibit No. 2 to Affidavit of F. Goodwin Smith

Supplemental Agreement

Between

Hartford-Empire Company

And

—— Company

Agreement made this — day of ——, 1940, by and between Hartford-Empire Company, a Delaware Corporation with its principal place of business at Hartford, Connecticut (hereinafter called "Licensor") and —— Company, a —— Corporation with its principal place of business at —— (hereinafter called "Licensee").

Whereas Licensee holds from Licensor, under certain agreements and/or licenses and leases, certain equipment and the right of use thereof for the manufacture of specified glassware (said agreements and/or licenses and leases being specified in Schedule A annexed hereto); and

Whereas Licensor and Licensee desire to modify said agreements and/or licenses and leases in certain respects as hereinbelow set forth:

[fol. 618] Now, Therefore, in consideration of the premises and of other valuable considerations, Licensor and Licensee agree as follows:

Section 1—Amendment of Ware Fields. Each of said agreements and/or licenses and leases specified in Schedule A under the respective headings "Feeder Contracts" and "Hartford Forming Machine Contracts" is hereby amended with respect to Schedule C thereof, entitled "Specification of Glassware Which May Be Made. Permitted Ware" and with respect to the portion of said schedule entitled "Ex-

clusions", by cancelling said Schedule C and said "Exclusions" and by substituting the following:

"Schedule C

"Specification of Glassware Which May Be Made

"Permitted Ware

"The ware to be produced hereunder shall comprise any and all articles of glassware".

Section 2—Additional Equipment. Licensor hereby grants to Licensee the right, so long as any of the agreements and/or licenses and leases set forth in Schedule A are in effect, to take on license and lease from Licensor such numbers of Hartford Single Feeders, Hartford Individual Section Machines, Hartford "28" Machines, Hartford [fol. 619] lehrs, Hartford Stackers and Hartford Conveyors as Licensee shall from time to time desire. Such feeders, machines, lehrs, stackers and conveyors may be of present types, including improvements thereon, or of such future types as Licensor may license and lease to others. The license fees for such equipment and the royalties or rentals for the use thereof shall be those established as standard by Licensor at the time when Licensee acquires such equipment.

Section 3—Amendment of Use Covenants.

(a) Each of the agreements and/or licenses and leases fied in Schedule A annexed hereto under the hearing "Feeder Contracts" and "Hartford Forming Machine Contracts" is hereby amended with respect to Section 6 thereof, by striking out the second paragraph of Section 6 thereof.

(b) Each of the agreements and/or licenses and leases specified in Schedule A, annexed hereto, is hereby amended with respect to Section 8 thereof, by striking out the second sentence, which reads as follows:

[fol. 620] "Complete title to all patent rights at any time possessed during the term of this license and lease by the Licensee covering such changes and additions shall be transferred to the Licensor."

and substituting therefor the following:

"In the event that the Licensee shall acquire any patent right during the term hereof covering such changes and additions, Licensee shall grant to the Licensor, without charge, a non-exclusive, divisible and transferable license under and for the term of such patent right."

Section 4—Amendment of Feeder Royalty Schedule.—Each of the agreements and/or licenses and leases specified in Schedule A annexed hereto under the heading "Feeder Contracts" is hereby amended by substituting for Schedule D thereof, entitled "Rates of Royalty", a new royalty schedule, which is annexed hereto as Schedule B.

[fol. 621] In Witness Whereof, the parties have hereunto set their hands and seals, acting herein by their respective officers duly authorized therefor.

Hartford Empire Company. By —— ——. (Seal.)

Attest: —— ——, Secretary.

—— Company. By —— ——. (Seal.)

Attest: —— ——.

[fol. 622] Schedule A

Annexed to Supplemental Agreement

Hartford-Empire Company and

—— Company

Dated ——, 1940.

Feeder Contracts
(List)

Hartford Forming Machine Contracts
(List)

Lehr Contracts
(List)

[fol. 622] SCHEDULE B

Annexed to Supplemental Agreement
Hartford-Empire Company and
———— Company
Dated ————, 1940

Rates of Royalty

The weights below specified are the weights of the finished articles.

	Blown or Pressed and Blown Per Gross	Purely Pressed* Per Gross
½ oz. wt. and under	7½ cents	7½ cents
Over ½ oz. wt. and not exceeding 1 oz. wt.	8 "	7½ "
Over 1 oz. wt. and not exceeding 1½ oz. wt.	9 "	7½ "
Over 1½ oz. wt. and not exceeding 2 oz. wt.	10 "	7½ "
Over 2 oz. wt. and not exceeding 4 oz. wt.	11 "	8¼ "
Over 4 oz. wt. and not exceeding 8 oz. wt.	12 "	9 "
Over 8 oz. wt. and not exceeding 12 oz. wt.	13 "	9¾ "
Over 12 oz. wt. and not exceeding 13 oz. wt.	14 "	10½ "
Over 13 oz. wt. and not exceeding 16 oz. wt.	15 "	11¼ "
Over 16 oz. wt. and not exceeding 20 oz. wt.	16 "	12 "
Over 20 oz. wt. and not exceeding 26 oz. wt.	18 "	13½ "
Over 26 oz. wt. and not exceeding 30 oz. wt.	21 "	15¾ "
Over 30 oz. wt. and not exceeding 96 oz. wt.	1/12 of a cent per pound	1/16 of a cent per pound
Over 96 oz. wt.	1/6 of a cent per pound	1/8 of a cent per pound

* Purely Pressed, that is produced by an operation which consists of pressing without the intervention of any air in the mold for the purpose of changing the shape of the article to be produced.

[fol. 624] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PLAINTIFF'S MOTION FOR ORDER IMPOUNDING FUNDS—Filed March 31, 1941

Now comes the plaintiff in the above entitled action and says

1. The "General License Agreement" entered into between defendants Hartford-Empire Company and Hazel-Atlas Glass Company under date of July 1, 1932 (Ex. 142), as alleged in paragraphs 98 and 100 .of the complaint, is a contract and combination in restraint of trade or commerce among the several states, and was made and has been and is

being continued in force pursuant to a combination or conspiracy in restraint of such trade, and as a part of a monopoly or attempt to monopolize a part of such trade, and said Agreement is therefore illegal.

2. The evidence heretofore adduced by the Government at the trial of this action, tends strongly to prove that said Agreement in all its parts is illegal and void as a contract or combination in violation of Secs. 1 and 2 of the Sherman Act [fol. 625] (Act of July 2, 1890, c. 647, Secs. 1 and 2, 26 Stat. 209, 15 U. S. C. A. Secs. 1 and 2) and as a contract entered into pursuant to a combination or conspiracy in violation thereof, and as a part of a monopoly or attempt to monopolize in violation thereof and will therefore, at the conclusion of this trial, be declared illegal and void and cancelled by this Court.

3. Among many features of said Agreement, the negotiations leading up to its execution and the effects of its operation which render it thus illegal are the following:

(a) It was entered into as a part of a partnership arrangement embodying two agreements between Hazel-Atlas and Hartford, four agreements between Hartford and Owens, and two agreements between Hazel-Atlas and Owens which were simultaneously executed and resulted in concerted action by Hazel-Atlas, Hartford and Owens to control and stabilize the glass industry.

(b) Through the collaboration of Hartford and Owens it strengthened and perpetuated the dominant position of Hazel-Atlas as second largest glass container manufacturer and distributor in the United States.

(1) By according to Hazel-Atlas a one-third share in the royalties (over $850,000.00) paid by Hazel-Atlas's competitors.

(2) By according to Hazel-Atlas a right to make, use and [fol. 626] sell Hartford's inventions, which was not accorded to any other Hartford licensees, including Hazel-Atlas's competitors.

(3) By permitting Hazel-Atlas to retain title to its machines and equipment, which was not done for any other licensee except Ball Brothers and, as to a few pieces of equipment, for Capstan.

(c) It is a cross-licensing agreement between owners of independent competing patents as a result of which the glass industry is dominated.

(d) It was not executed in settlement of a dispute as to the validity of conflicting patent claims.

(e) It placed unlawful limitations upon the right of Hazel-Atlas to engage in the manufacture of glassware.

4. Said Agreement provides in Sec. 6 thereof that Hartford shall pay to Hazel-Atlas one-third of Hartford's net income defined as the excess over $850,000.00 of its income from licensed inventions. Payments to Hazel-Atlas under this Sec. 6 and the excess or deficiency thereof above or below the payments by Hazel-Atlas to Hartford under Sec. 3 of said Agreement, as hereinafter described, are as follows:

	Payments to Hazel-Atlas	*Excess or deficiency*
7/1/32—12/31/32	$ 180,404.05	$ 37,495.90
1933	715,798.15	51,636.96
1934	877,003.58	49,149.70
1935	1,006,687.67	85,820.24
1936	1,303,301.12	163,985.04
1937	1,518,117.97	277,264.45
1938	1,245,739.61	241,446.56
1939	1,509,633.48	356,260.85
1940	1,677,345.15	490,354.36

[fol. 627] It is a fair inference that the payments for 1941 under this section will be as great, if not greater, than the payments for 1940; and the next payment by Hartford to Hazel-Atlas thereunder will fall due on May 1, 1941.

5. The continuance of said payments by Hartford to Hazel-Atlas has caused, and if not enjoined, will continue to cause irreparable injury to the public interest because

(a) It accords to Hazel-Atlas, the second largest glass container manufacturer and distributor in the United States, a one-third share in the royalties (over $850,000.00) paid by all of Hazel-Atlas's competitors except the four small non-licensees of Hartford (the combined production of which is but 3.4% of the entire gob feed production), which is in effect a rebate of royalties that works great and

irreparable injury to Hazel-Atlas's many competitors, who receive no such rebate, and illegally strengthens and perpetuates the dominant position of Hazel-Atlas, in combination with Hartford and Owens.

(b) It deprives Hartford of income which otherwise should be available for

(1) the reduction of royalties

(2) the extension of machine servicing and resultant increased efficiency of its licensees, and

(3) the extension of research and invention designed to [fol. 628] achieve major economics in the industry.

(c) It rewards Hazel-Atlas for not manufacturing more than one-fifth of its glassware with inventions not licensed by Hartford.

(d) It unreasonably deprives the ultimate consumer of the benefits of free competition, lower prices, better products, and improved service.

6. Said Agreement provides in Sec. 3 thereof that Hazel-Atlas shall pay to Hartford royalties on glassware manufactured by Hazel-Atlas by the use of any inventions licensed under said Agreement; payments under this Sec. 3 have been made to Hartford as follows:

7/1/32—12/31/32	$ 217,899.95
1933	664,161.19
1934	827,853.88
1935	920,867.43
1936	1,139,316.08
1937	1,240,853.52
1938	1,004,293.05
1939	1,153,372.63
1940	1,186,990.79

It is a fair inference that the payment for 1941 under this section will be as great, if not greater than the payments for 1940; and the next payment by Hazel-Atlas to Hartford thereunder will fall due on April 15, 1941.

7. The continuance of said payments by Hazel-Atlas to Hartford has caused, and if not enjoined, will continue to cause irreparable injury to the public interest because

(a) It contributes substantially to the maintenance of the illegal position of dominance and the illegal monopoly achieved by Hartford through the various illegal practices alleged in the complaint.

(b) It deprives Hazel-Atlas of the means of using and

[fol. 629] developing competing devices which might defeat the Hartford and Owens monopolies through economic competition.

(c) It unreasonably deprives the ultimate consumer of the benefits of free competition, lower prices, better products, and improved service.

8. If said Agreement is declared illegal at the conclusion of the trial of this action, neither of the parties thereto, will be permitted, under the law, to recover any of the payments theretofore made to the other under said Secs. 3 and 6 thereof and all injury to the public interest which has been and is being caused by such payments will be and become irreparable; and any and all payments which may be made during the further pendency of this action will constitute irreparable injury to the public interest unless some means be taken to preserve the *status quo* and to provide, upon final adjudication of the illegality of said Agreement, for the return of such payments to the respective parties paying the same or such other disposition thereof as justice may require.

9. If all payments hereafter called for under the provisions of said Secs. 6 and 3 of said Agreement, are impounded by this Court pending the outcome of this action and final determination of the illegality of said Agreement, no injury will thereby be done to either party to the Agreement, the *status quo* between such parties will be preserved, the continuance of the injury to Hazel-Atlas's competitors and to the public interest will be arrested pending such final determination and this Court will at that time be in a position to order the disposition of such payments in such manner as the law and the interests of the public may require.

[fol. 630] 10. Under Sec. 4 of the Sherman Act (Act of July 2, 1890, c. 647, Sec. 4, 26 Stat. 209) as amended (Act of Mar. 3, 1911, c. 231, Sec. 291, 36 Stat. 1167, 15 U. S. C. A. Sec.

4), as well as under its general equity powers, this Court is empowered, at any time pending this action and before final decree, to "make such temporary restraining order or prohibition as shall be deemed just in the premises".

11. In the light of the evidence heretofore adduced at this trial coupled with the allegations of the complaint and the considerations above set forth, the interests of justice and of the public require that this Court act before the due dates for the next payments under Secs. 6 and 3 of said Agreement, to preserve the *status quo* and prevent irreparable injury to the competitors of Hazel-Atlas and to the public interest by impounding said payments in Court pending final adjudication as to the illegality of said Agreement and determination by this Court as to the just and equitable disposition of said funds.

Wherefore, plaintiff prays that an order be entered:

1. Directing Hazel-Atlas Glass Company, pending the expiration of the time for appeal from the final judgment of this Court in this action or, if an appeal be taken from such final judgment, then pending the final determination of this action on such appeal, to deposit with the Clerk of this Court, pursuant to Rev. Stat. Secs. 995 and 996 (28 U. S. C. A. Secs. 851, 852) and subject to the further order of this Court or of any court where this action may be pending on appeal, all payments which Hazel-Atlas is called upon to make to Hartford under the provisions of Sec. 3 [fol. 631] of said Agreement, such deposits to be made at the times when it is provided in said Agreement that such payments should be made to Hartford.

2. Directing Hartford-Empire Company, pending the expiration of the time for appeal from final judgment of this Court, or if an appeal be taken from such final judgment, then pending the final determination of this action on such appeal to deposit with the Clerk of this Court, pursuant to Rev. Stat. Secs. 995 and 996 (28 U. S. C. A. Secs. 851, 852) and subject to the further order of this Court or of any court where this action may be pending on appeal, all payments which Hartford is called upon to make to Hazel-Atlas under the provisions of Sec. 6 of said Agreement, such deposits to be made at the times when it is provided in said Agreement that such payments should be made to Hazel-Atlas.

3. For such other and further relief as to this Court shall seem meet and proper.

United States of America, (Signed) E. B. Freed, United States Attorney for the Northern District of Ohio; (Signed) Samuel J. Isseks, Special Assistant to the Attorney General.

March 28, 1941.

[fols. 632-634] *Duly sworn to by Samuel S. Isseks. Jurat omitted in printing.*

[fol. 635] [File endorsement omitted]

[Title omitted]

AFFIDAVIT OF J. H. McNASH—Filed April 8, 1941

STATE OF WEST VIRGINIA,
County of Ohio, ss:

J. Harrison McNash, being duly sworn, deposes and says:

I. Commencing in 1903, I have been continuously connected with the defendant Hazel-Atlas Glass Company, hereinafter referred to as Hazel-Atlas. I began as an errand boy, then working in the plants as a glass house boy, learning how to operate machines, in 1910 becoming chief clerk to the general manager, from 1917 to 1919 acting superintendent of various glass plants, in 1919 assistant general manager and secretary, in 1922 assistant to the president, and in 1924, first a vice-president and then, in November, becoming president, which I have been to the present time.

Since 1922, I have been at least generally familiar with all the activities of the Hazel-Atlas Company, and I have been particularly familiar with its affairs involved in the present suit.

[fol. 636] I signed an answer in this suit in behalf of the Hazel-Atlas Company, which was not verified by me, but I wish now to state, on behalf of the Hazel-Atlas Company, that all the denials and statements in that answer were, and are, correct, as I believe.

II. The Hazel-Atlas Company is a large and financially responsible concern, and wholly solvent. It has paid divi-

dends since January 1909, without any omission; it has no bonded indebtedness or preferred stock; its net worth is in excess of $20,000,000; and its yearly sales are in excess of $30,000,000. It now has manufacturing plants at Wheeling, West Virginia; Zanesville, Ohio; Washington, Pennsylvania; Grafton, West Virginia; Clarksburg, West Virginia; Ada, Oklahoma; Blackwell, Oklahoma; and Oakland, California, where more than 6,300 are employed.

III. The policy of the Hazel-Atlas Company, at all times since prior to 1924 (when I became president) and to date, has been to manufacture and sell glassware at the lowest prices consistent with a reasonable profit, and that policy has been consistently followed. It has always been my belief that it was to the best interests of the Hazel-Atlas Company to decrease the prices of its products, so that more would be purchased and the market for its products widened, and this is what has been done.

It has also been the policy of the Hazel-Atlas Company since its beginning, prior to 1900, to be independent of any others for its machines used in the manufacture of glassware. The Hazel-Atlas Company has been a pioneer in the use of automatic machines for glassware manufacture, commencing in 1896 with the original Blue forming machine, whose basic principles are used today in all wide mouth forming machines, and in 1921 with single plunger feeders.

Efficient machines are essential to existence in the highly competitive glass industry. For many years we have spent each year, and are now spending, hundreds of thousands [fol. 637] of dollars a year on the development and commercialization of new machines, particularly feeders and formers.

As for patent licenses from others, we have never taken a license, except where it seemed necessary to avoid very great danger to our company, or where the cost of royalties was less than the expense of probable litigation.

I would like to state first the reason why we took a license under the Hartford patents, by the July 1, 1932 agreement.

IV. For many years prior to 1932, the Hartford Company, with the aid of its licensees, including the Owens Company, the largest manufacturer of glass containers, had been suing the Hazel-Atlas Company and our wholly owned

subsidiary, The Kearns-Gorsuch Bottle Company, for alleged patent infringement. The first suit was brought in the Sixth Circuit against Kearns-Gorsuch and was on four patents; a second suit was in the Third Circuit against Hazel-Atlas, on one patent; a third suit was in the Fourth Circuit, against us, on three patents; and a fourth suit had been threatened in the Eighth Circuit. The Hartford Company also had many additional patents, relating to machines used by us, and we had many Patent Office interferences with Hartford patent applications.

Exhibit A is a list of suits and patents pending against Hazel-Atlas when the July 1, 1932 agreement was made.

(1) In the Third Circuit case, the Peiler "stuffing" patent had been declared by the Court of Appeals to be valid and infringed by our plunger feeders, upon which we depended for our manufacture of glassware. If this decision stood, we were either out of business or would be compelled to use less efficient apparatus, which would injure us greatly, and perhaps fatally.

I was advised by our counsel that there was little chance of the Third Circuit Court reversing itself on a petition for rehearing, because the case had been very carefully [fol. 638] considered by the Court, as evidenced by the dissenting opinion, and they did not know of any new evidence.

I was also advised that it was very improbable that the United States Supreme Court would take the case on certiorari, because it was an ordinary patent case, with no conflict between circuits, and the Supreme Court very rarely granted certiorari in such cases. I have since been told that in 1930 and 1931 the Supreme Court denied 60 out of 63 petitions for certiorari in patent cases, and that the Supreme Court later denied three different petitions for certiorari to the Third Circuit on the same "stuffing" patent, in the *Shawkee* case.

(2) In the Fourth Circuit case, the three patents in suit were very dangerous to Hazel-Atlas, if sustained according to the contentions of Hartford. Our lawyers advised me that there was a substantial chance that we might lose on at least one patent.

(3) Suits had also been threatened against us on other important patents, it had cost us about $100,000 a year to defend the litigation in many courts for the past six years, the Hartford Company had more than 30 licensees, includ-

ing the Owens Company, and it had been aided by some of them in suing us. We were in a very difficult position. It seemed to us that it was plain common sense to end all this expense, trouble and risk, if a settlement could be had on terms that did not cost too much.

Since 1924, our position had consistently been that we would not take a license under the Hartford patents, unless at royalties less than what it would cost us to defend patent suits, as our lawyers told us that they believed the Hartford patents were weak.

But, the decision on May 6, 1932, of the Third Circuit Court of Appeals, sustaining the "stuffing" patent against us, the impending injunction against our plunger feeders, the very large sums of money, perhaps millions of dollars, which might be recovered against us for past infringement, [fol. 639] and the many other suits and patents, compelled us to obtain the best settlement and license we could get.

V. The nature of the license rights given us by the Hartford Company is clearly stated in the July, 1932 agreement. It is simply a non-exclusive license, the Hartford Company agreeing not to sue us for patent infringement for licensed acts, in consideration of royalties.

The Hazel-Atlas Company did not obtain any exclusive rights, *i. e.*, ability to prevent the Hartford Company from granting any kind of a license to anyone it wanted.

I never, nor to my knowledge has anyone connected with Hazel-Atlas Company, ever asked anyone connected with the Hartford Company to refuse either the grant of a license or the extension of a license. We had no right to do so, and we have not done it.

The license granted us by the Hartford Company was restricted. The complaint in this case is mistaken in stating (p. 80, para. 211): "Except for Owens and Hazel-Atlas every licensee of Hartford is limited as to the type or kind of glassware." The July 1, 1932 agreement restricted Hazel-Atlas as to many articles, such as milk bottles, etc. However it should be observed that we did not agree not to manufacture in the excluded fields, and that we had exactly the same rights in them as we had before making the agreement, which was merely a promise by the Hartford-Empire Company, in consideration of royalties, not to sue for acts in the licensed fields.

VI. In June, 1932, the Hazel-Atlas Company had three things which the Hartford Company wanted, and which were of large importance to us. These were our claims on the Lott patents, our other patent rights, and our great engineering experience, particularly with feeders and formers, which not only antedated by many years that of the Hartford Company but had been very extensive.

[fol. 640] A. The Lott patents, Nos. 1,382,993 and 1,382,994, were very important. As I am advised, they were used in all Hartford feeders, and were marked on the feeders. The patents had been established in 1924 as valid and infringed by Hartford Company feeders, by a consent decree in a suit by the Owens Company against the J. T. & A. Hamilton Company and the Hartford Company.

The Lott patents issued on June 28, 1921 and did not expire until June 28, 1938.

By a 1909 contract with the Owens Company, which owned the Lott patents, the Hazel-Atlas Company had exclusive rights under these patents, for wide mouth ware, so that the Owens Company could not grant licenses to others for such ware.

But, by a 1924 contract between the Owens Company and the Hartford Company, the Owens Company assumed to license the Hartford feeders for such ware, which was, as we considered it, in violation of our 1909 contract, and also without any effect as to licensing the Hartford feeders.

On September 23, 1924, after we learned of the *Owens-Hartford* contract, we wrote the Owens Company, stating that it was in violation of the 1909 agreement. The Owens Company replied, denying such breach. We then instructed our counsel to study the facts to ascertain whether we had a good case in court, which they did, advising us that in their opinion we did, and on June 2, 1925, our executive committee at a meeting at which I was present, as shown by the minutes of the meeting, authorized the bringing of a suit against the Owens Company. (During 1925, we were having serious Patent Office interferences with the Hartford and Owens concerns, which took considerable time and attention.) In December, 1925, a very important Steimer patent 1,564,909, was granted by the Patent Office to the Hartford Company, which threatened our plunger feeders, and which our patent lawyers and technical people immediately commenced to study.

[fol. 641] Under date of February 1, 1926, our counsel sent me a draft of proposed bill of complaint against the Owens Company, and also interrogatories addressed to it. But almost immediately thereafter, the Hartford patent litigation against us commenced. On February 4, 1926, the Hartford Company sent an infringement notice, on the Steimer patent 1,564,909 to our subsidiary, Kearns-Gorsuch, and on February 28th they sent a notice to us of infringement of the "phase change" patent 1,573,742. In April and May suits were brought on these and other patents in Missouri against the Obear-Nester Company, and in Ohio against Nivison-Weiskopf Company, Lamb Glass Company, and against Kearns-Gorsuch. There were six patents in these various suits, and the Hartford Company had many other patents, including the Third Circuit patent, upon which they sued us in June 1928.

The defense against all these very serious patent suits consumed a great deal of our time and that of our lawyers, and was very expensive. We did not think we should involve ourselves in another suit of large importance, against the Owens Company, until the patent suits were ended, especially as they involved the Lott patents, which were submitted to the courts in the patent suits, as anticipating some of the Hartford patents.

We always considered our rights to the Lott patents to be very valuable and in the negotiations which resulted in the July 1, 1932 agreement, we insisted upon full recognition of those rights.

B. In June, 1932, we had many patents relating to both feeders and forming machines, which had resulted from the work done by our engineers since 1922, covering many improvements which we had found in actual commercial experience to be of great value.

A list of these patents was sent in June, 1932, to the Hartford people.

In addition to these patents, there was also the future patents for inventions and improvements, which the Hazel-Atlas engineers undoubtedly would make. Our company [fol. 642] was then, and has continued to be, the largest user of plunger feeders. Indeed, today I understand it is the only concern using its own plunger feeders. A right to obtain a license under future Hazel-Atlas patents was not only very valuable to the Hartford Company and its licensees

but also obviously detrimental to us, as it would permit our competitors to use our inventions without paying any additional royalty.

C. The practical experience and knowledge of the Hazel-Atlas Company, including its subsidiaries, goes back more than fifty years. There is a great difference between designing a theoretically perfect machine and making a machine operate in the hands of an ordinary skilled workman, so that it will make money, which is what we had been doing since at least 1907. Clearly, education of the Hartford engineers by us would be to their advantage and also to that of our competitors, while injuring us correspondingly.

Since 1921, Hazel-Atlas had been developing, engineering and using its own several types of feeders and formers, with the result that Hazel-Atlas had a vast amount of practical experience with feeders and formers, and operated them in efficient and economical ways. Many of the methods and devices used by Hazel-Atlas were unpatentable, being of the nature of non-inventive improvements or trade secrets, but nevertheless they were very valuable, because the technique and "know-how" of a business, especially a manufacturing business, are often more important than patents.

Often it is better to keep a new process as a trade secret, instead of endeavoring to patent it. It is usually very difficult to obtain legal proof of infringement of a process, inside a carefully guarded plant.

The "trade secrets" of Hazel-Atlas, as well as its patented inventions, became available to Hartford.

Hartford in 1932 had little, if any, experience in the practical manufacture of glassware. It was a designer and developer of machines, but did not operate them. Hazel-Atlas for at least ten years had been operating its feeders [fol. 643] and formers, very successfully, and Hartford (and the Hartford licensees) wanted to know how Hazel-Atlas did this.

It was a great detriment to Hazel-Atlas to allow the Hartford engineers to visit the Hazel-Atlas plants and thereby educate them in the Hazel-Atlas practices, so that any of our unpatentable methods became available to the competitors of Hazel-Atlas, and Hartford benefited by increasing the business of these competitors.

VII. Our negotiations with the Hartford Company, which resulted in the July, 1932 agreement, were at arm's length. Naturally, each side wanted to get from the other as much as it could. Each had claims against the other for the past, and each wanted license rights for the future. Finally, after several weeks of negotiations, we arrived at a settlement, whose main points were as follows:

A. We paid the Hartford Company $1,000,000 for their claims for past infringements. We tried to pay less and it was also suggested that in return for our patent rights, Hartford should release its claim for past infringements. I understand that this is what the Hartford Company has done in the case of other infringers. However, in our case the Hartford Company refused to make any such allowance.

B. A non-exclusive license was granted to us until January 3, 1945, which is when the Third Circuit patent adjudicated against us expires.

C. The license was discriminatory against us, in the following three respects, each of which was unsuccessfully complained of by us during the negotiations:

(1) Although the Hazel-Atlas Company designed, developed and serviced its own machines, at great expense to it, it had to pay the same royalties as other Hartford licensees, to whom the Hartford Company supplied machines and serviced them. Thus, the cost to Hazel-Atlas of operating a feeder was not only the royalty paid to the Hartford Company but also the cost of its manufacture and all engineering [fol. 644] connected with it, which was not true of other Hartford licensees.

My understanding is that in some cases the expenses to Hartford of servicing its license- feeders are greater than the royalties it obtains from such feeders.

Other Hartford licensees have been and are now profiting at our expense, because our royalties aid the Hartford Company to give them engineering services, which we do not have from the Hartford Company.

The Hazel-Atlas Company would have paid, and it would now be paying, in royalties, over $250,000 a year less to the Hartford Company ,if it were on the same basis, so that its machines had only a royalty expense, and not also an engineering expense.

(2) The expense of defending patent suits is taken care of by the Hartford Company for other licensees, but not for the Hazel-Atlas Company. Also, other licensees can recover from the Hartford Company all their royalties paid during the infringements, at least for two years, as I understand. As I know that the cost of defending a single patent suit is very expensive, perhaps being $50,000 or more, it is apparent that this Hartford guarantee is valuable. We could not obtain any recognition of this difference against us.

(3) The Hartford Company had a decree and injunction against us with respect to the Third Circuit patent. No other Hartford licensee, including the Owens Company, would be under this burden. We unsuccessfully represented to the Hartford Company that it was only fair to put the Hazel-Atlas Company in the same position as its other licensees, by removing the injunction, but this was refused.

We thought then, and think now, that the Hartford Company drove a very hard bargain with us, but the Third Circuit decision left us with no choice, as a practical matter. I would have much preferred to have offset our respective past claims, to have fixed a reasonable royalty for us on the Lott patents and our other patents, to have fixed a reason-[fol. 645] able royalty for the Hartford patents (and not a much higher royalty which included engineering services we did not want or use) and to have kept to ourselves our many years of practical experience. But we could not make such a settlement.

D. The payment by the Hartford Company for what it got from us, for a release from past infringements and for future rights, was in the form of a share in its income from royalties under our patents and the Hartford patents. We discussed during the negotiations whether the payment should be in the form of cancellation of the Hartford claim for past infringements, a cash payment, etc. However, no one knew in 1932 how much the Lott patents would be used until they expired in 1938, or how much our other patents or engineering knowledge for the future would be worth. It seemed to me then, and it seems now, that the least speculative way was to relate the payments to the future use of all the combined inventions, namely, to the royalties received by the Hartford Company.

As for the amount of our part of the royalties, this was entirely a matter or negotiation. The Hartford Company naturally wanted to pay us a minimum, while we insisted that what we had was worth more than what the Owens Company had given to the Hartford Company in the 1924 contract. Not only did we have, as we believed, rights under the Lott patents, which I understand were perhaps the principal reason for the Hartford Company entering into its 1924 agreement with the Owens Company, but we were then and had been for many years not only a larger user of plunger feeders than the Owens Company, but were using our own independently developed feeders, while the Owens Company was using Hartford Company feeders.

Many important patents have been granted to our company since the 1932 license agreement, the Hartford Company and its licensees have had the right to use their inventions, and, as I am advised, today and for some years past, millions of articles a year are being made on Hartford [fol. 646] licensed machines using Hazel-Atlas patented inventions. Also, the Hartford engineers have been educated by knowledge of our practices, to the benefit of them and their licensees.

By the 1932 agreement the Hartford Company not only received all this, but an option to continue its license under the Hazel-Atlas patents, after January 3, 1945, on reasonable terms.

VIII. I have read a copy of the plaintiff's motion for order impounding funds. The following references are to its numbered paragraphs:

3(a). It is alleged that the July 1, 1932 agreements

"were simultaneously executed and resulted in concerted action by Hazel-Atlas, Hartford and Owens to control and stabilize the glass industry."

This is not true, so far as Hazel-Atlas Company is concerned, and I do not believe it to be true of the others.

3(b). It is also said that the July 1, 1932 agreement

"strengthened and perpetuated the dominant position of Hazel-Atlas as second largest glass container manufacturer and distributor in the United States."

This is not true. The only reason that the Hazel-Atlas Company sells large quantities of glassware is because of its low prices and high quality. I may add that since the 1932 agreement, the percentage of ware sold by Hazel-Atlas Company has substantially decreased.

Twenty-eight different manufacturers of glass containers in the east and five in the west are now actively competing with us.

Plaintiff's motion also says that the 1932 agreement accorded to us

"(1) * * * a one-third share in the royalties (over $850,000.00) paid by Hazel-Atlas' competitiors."

[fol. 647] But this is simply the payment for the benefits the Hartford licensees, and Hartford, have received and are now using.

"(2) * * *, a right to make, use and sell Hartford's inventions, which was not accorded to any other Hartford licensees, including Hazel-Atlas competitors."

We did not obtain any right to "sell Hartford's inventions". I do not know the nature of other licenses granted by Hartford, except that I understand that the Owens Company, our principal competitor, does have a license to manufacture and to use.

All that we obtained from Hartford was the right to continue to manufacture and use our own feeders, which we had been using since 1922, without being sued by Hartford for patent infringement.

"(3) * * *, by permitting Hazel-Atlas to retain title to its machines and equipment," etc.

Practically all our machines have been either manufactured by us or purchased from others, and there was no reason why we should transfer the ownership of the machines, upon which we depended for our manufacture, to anyone else. I do not know what the Hartford Company does with its other licensees.

"(c) It is a cross-licensing agreement between owners of independent competing patents as a result of which the glass industry is dominated."

The patents are not "competing", as our patents are, as I understand it, subsidiary and supplementary to broad

Hartford patents. And the patent licenses were only non-exclusive.

"(d) It was not executed in settlement of a dispute as to the validity of conflicting patent claims."

[fol. 648] This is not true. The conflict between the Hartford Company and ourselves was with respect to feeders. We insisted that our feeders were protected by our early Brookfield patents, to which we had rights. The Hartford Company insisted that our feeders were covered by their later Steimer and Peiler patents, and our rights to the Lott patents were disputed. Both sides had many other patents and applications relating to feeders, which were in substantial conflict.

"(e) It placed unlawful limitations upon the right of Hazel-Atlas to engage in the manufacture of glass ware."

There was no limitation, either lawful or unlawful. The license was for certain fields, and in the other fields we had exactly the same rights to manufacture before the license was granted, as we did afterwards. In either case, we ran the risk of a patent infringement suit.

We did not admit either the validity nor the scope of the Hartford patents, with respect to the unlicensed fields (General License Agreement, Sec. 8). We were as free after the license, as before, to question the validity and scope of any Hartford patent, in the unlicensed fields.

In paragraph 5 of plaintiff's motion, it is said that the continuance of the payments by Hartford for what it has received and is now using would "cause irreparable injury to the public interest because

(a) It * * * is in effect a rebate of royalties."

This is answered above.

"(b) It deprives Hartford of income which otherwise should be available for

(1) the reduction of royalties.

(2) the extension of machine service and resultant increased efficiency of its licensees, and

(3) the extension of research and inventions designed to achieve major economies in the industry."

[fol. 649] Obviously, the Hartford Company would be benefited and its position in the industry strengthened, if it did not have to pay what it owes to the Hazel-Atlas Company. Whether it would use our money in reducing royalties, increasing dividends, increasing salaries, giving more free service to our competitors and thereby increasing their preferential position over us, conducting more research with resulting new patents, seems to me entirely immaterial.

"(c) It rewards Hazel-Atlas for not manufacturing more than one-fifth of its glass ware with inventions not licensed by Hartford."

The Hazel-Atlas Company is, and has been for years, manufacturing all its glassware under the Hartford patents. I do not understand the above quotation, nor, even if it were true that only part of our manufacture was under Hartford patents, how the payment by Hartford for what it owes us would reward us.

"(d) It unreasonably deprives the ultimate consumer of the benefits of free competition, lower prices, better products and improved service."

The fact that the Hartford Company is paying us for the use of our inventions seems to me to do exactly the opposite of the above. We are enabled to maintain a large and experienced engineering staff, which is continually developing and improving machines. Many important patents have been taken out by our inventors, and we are the only concern, so far as I know, which is developing, designing and using plunger feeders not manufactured or leased by the Hartford Company.

We are entirely free to grant licenses under our patents to anyone. Our present license with the Hartford Company expires on January 3, 1945, and it is our intention to be at that time as free as possible of the Hartford patents, as well as those of any other concern.

The net profit from our sales and all other income, excluding a 1935 profit from sales of securities, has been less each [fol. 650] year since 1933 than it was during 1931 and 1932. For the last three years, including 1940, the profit in each year was less than in any of the years 1931 through 1934.

IX. I have been given copies of letters and other papers, which I am told are exhibits in this case, and asked to comment upon them, which I will now do. These are exhibits 128, 155, 160, 162, 163, 164, 165, 168, 178, 191, 222, 550, 588 and 589.

Ex. 128. Nov. 13, 1931. Levis letter to F. G. Smith. This mentions a conversation on the preceding day between me and Mr. Levis. The letter says:

"I have some very definite reactions to what he [McNash] had to say, which lead me to believe that a proper handling of the situation will permit his agreeing to go along on a basis that would be much better than the present basis if the outcome of the Philadelphia suit would be unfavorable to you."

I do not remember this particular talk, but I do know my position at that time, and at all times prior to the decision of the Philadelphia Court of Appeals was that we did not regard the Hartford patents as sufficiently broad to necessitate our taking a license on any but nominal royalty terms.

Ex. 155. Nov. 16, 1932. Letter from McNash to F. G. Smith. This states:

"we would have no objection to Latchford's having a fruit jar license, restricted."

I recall this matter. We had a non-exclusive fruit jar license, and we could not object to the Hartford Company granting a fruit jar license to anyone. Mr. Smith asked my views as to granting the Latchford Company a restricted license, because we were one of Hartford's large licensees in this field, and I told him that we had no objection.

[fol. 651] *Ex. 160.* July 27, 1932. F. G. Smith letter to I. J. Collins. This suggests that Collins talk to McNash about acquiring the Brockway business, and states that McNash "would be just as well satisfied if you took over this output."

I remember this. We never had any interest in acquiring the Brockway Company, or any part of it, or who should acquire it.

Ex. 162. January 10, 1933. F. G. Smith to Houghton. Says that Smith told McNash

"the Hazel-Atlas contract as drawn probably might prove very embarrassing to Hazel and to Hartford and that it might easily create a situation whereby Hartford would be forced to run the risk of upsetting the entire apple cart to the detriment of all parties concerned. I told McNash I felt quite sure that he would not want to force Hartford to sue Reed in lieu of making a settlement with Reed due to the clause in the Hazel-Atlas contract covering another adjudication by Hartford by July 1, 1934."

The Peiler "stuffing" patent had been adjudicated against us in the Third Circuit. We were insistent that we, being under injunction, should not be bound by the patent while infringers competed with us. In the July 1932 contract, Hartford was obligated to obtain an adjudication in two years. However, Mr. Smith told me there were settlement negotiations pending with the Reed Company, that it would be very difficult to get the case to trial in time for a final decision within our contract, and as the amount of infringing competition at that time was not great, we agreed to extend the period for two years, by an agreement dated August 29, 1933.

Ex. 163. March 7, 1933. F. G. Smith to McNash. This relates to a license to Hazel-Atlas to produce milk bottles in Oakland, California, and bears the notation "Subject to consultation with Owens-Ill. By J. H. McNash."
[fol. 652] I understood that Owens-Illinois had a license for the Pacific Coast, we had no license for milk bottles, and we obtained a partial license, subject to termination by the Owens Company.

Ex. 164. April 7, 1933. F. G. Smith to Levis. Suggests sitting "down with McNash and settle definitely just what concerns he feels there should be a one-third division and just what concerns he feels there should be a one-half division."
This appears to have been for the purpose of deciding what infringements of the Hartford patents came under the July 1932 agreements.

Ex. 165. June 30, 1933. F. G. Smith to Falck. Smith said to McNash "that McNash had continually made the statement that he hoped we had the plug feeder covered."

I do not recall making any such statement. I do know that I had serious doubts at that time as to whether the Hartford patents did cover the plug feeder. Although the Hartford patent lawyers insisted that their patents were infringed, our patent attorneys made a very careful investigation and expressed the opposite opinion in writing. However, they said there was some doubt and it would have been necessary to go to expensive and lengthy arbitration proceedings on the many patents claimed to be infringed. As the operation of the stationary plug feeder was not as efficient or satisfactory as the reciprocating plunger feeder, as a practical matter, we abandoned the stationary plug operation.

Ex. 168. Aug. 10, 1933. F. G. Smith to Houghton, saying:

"Levis has told McNash that he will not go through with the Miller deal and that he will not go through with the Lynch deal unless he, McNash, gives us the relief for which we are asking."

[fol. 653] I never had any interest in either the Miller deal or the Lynch deal. I do not know what was such "relief".

Ex. 178. Oct. 10, 1932. F. G. Smith to Collins. Refers to conference with Levis and McNash at White Sulphur Springs.

This relates to some informal discussions about a possible license by the Hartford Company to Ball Bros.

Ex. 191. February 9, 1933. McNash memorandum on Ball contract.

This was for the purpose of making sure that there was no misunderstanding that the Hazel-Atlas Company should always be able to sell all of the fruit jars it could.

Ex. 222. Sept. 30, 1932. McNash to F. G. Smith, stating that if McKee does not have "a license to make this character of ware they certainly should not be permitted to do so." Naturally, I objected to any infringing competition.

Ex. 550. Dec. 3, 1924. R. D. Brown to F. G. Smith, saying that "Mr. McNash has been pressing Mr. Belknap for a definite offer", and suggesting that Hazel-Atlas be paid for its patent rights.

Mr. Belknap had suggested that we take a license under the Hartford patents, but I refused to consider the matter

until we had a definite proposal, with precise terms. And, we have always believed that the Hazel-Atlas inventions and patents are more valuable than the Hartford patents, although we recognize that the Third Circuit Court of Appeals in 1932 did give one of the Hartford patents a broad construction. But until that time, our position had always been that we would not pay any substantial royalty to the Hartford Company.

Ex. 588. January 11, 1933. J. M. Beatty to F. G. Smith. Refers to Tygart Valley competition, and to Hazel-Atlas complaints, there being a pencilled note "Jim had no authority from me for the paragraph nor for the 'stockholder' [fol. 654] statement." This note was probably by W. H. McClure, V. P. of our company.

The Tygart Valley Company had a plant in the same town, Washington, Pa., as two of our plants, and the Tygart Company was largely an off-shoot of our company, although entirely independent, and many of its employees were our ex-employees. We have always had the most friendly relations with Tygart Valley.

After the decision by the Third Circuit Court of Appeals, and after we took a license, the Hartford Company advised the Tygart Valley people that they were infringing the Hartford patents. There was no attempt by anyone connected with our company, so far as I know, to persuade the Tygart Valley people to take a license, and we told them that we were entirely neutral so far as there might be any controversy between them and the Hartford Company.

J. H. McNash.

Subscribed and sworn to before me this 7 day of April, 1941. Marjorie E. Ford, Notary Public.

[fol. 655] EXHIBIT A TO AFFIDAVIT OF J. H. MCNASH

List of Hartford Suits and Patents Against Hazel-Atlas in June, 1932

1. *Hartford-Empire* v. *Hazel-Atlas* (W. D. Pa.), filed June 6, 1928; decision on May 5, 1932 by C. C. A. 3, 59 F. 2d 399, that Peiler "stuffing" patent No. 1,655,391 was valid and infringed.

2. *Hartford-Empire* v. *Kearns-Gorsuch* (S. D. Ohio), filed May 25, 1926; decision on May 12, 1932 by C. C. A. 6, 58

F. 2d 701. Steimer patent 1,564,909 invalid as to all 6 claims; Peiler "shear height" patent 1,589,304 invalid as to single claim in suit; Peiler "whittling" patent 1,631,107 invalid as to all 29 claims in suit; and Peiler "phase change" patent 1,573,742, all 18 claims in suit either invalid or restricted.

3. *Hartford-Empire* v. *Hazel-Atlas* (West Va.), filed January 16, 1931, on the Steimer, the "phase change" and the "shear height" patents. In Fourth Circuit.

4. On May 14, 1930, notice of infringement on the Steimer patent and on the "phase change" patent. (This apparently meant a suit in Oklahoma, Eighth Circuit.)

5. On November 24, 1924, notice of infringement of Tucker and Reeves patents 1,512,566 and 1,516,220, owned in 1932 by Hartford.

6. On December 6, 1927, notice of infringement of Lorenz "shear" patent 1,236,460.

7. In addition, Hazel-Atlas knew that Hartford had some Steimer and Peiler applications pending, which assumed to cover all feeders; (these applications subsequently issued in 1937 as broad patents); that Hartford had many other patents, on both feeders and formers; and that there had been many interferences in the Patent Office between Hazel-Atlas and Hartford inventors.

[fol. 656] [Title omitted]

AFFIDAVIT OF JOHN W. CARNAHAN—Filed April 8, 1941

STATE OF WEST VIRGINIA,
County of Ohio, ss.:

John W. Carnahan, being duly sworn deposes and says as follows:

1. I am General Factories Manager of the Hazel-Atlas Glass Company, and have been since August, 1937. Since 1897 I have been regularly employed by the Hazel-Atlas Glass Company, including its predecessors and subsidiaries. I commenced with the Atlas Glass Company as a carrying-in boy, who carried the ware to the lehrs, being then fifteen years old. I then served an apprenticeship in a mold and machine shop in the Atlas plant and became an assistant

foreman. In 1913 I had charge of the mold and machine shop of the Oklahoma Bottle and Glass Company of Blackwell, Oklahoma, which was manufacturing fruit jars for the Hazel-Atlas Glass Company. I also had charge of the machines in the factory at Blackwell. In 1923 I went to [fol. 657] Zanesville, Ohio, with The Kearns-Gorsuch Bottle Company, a subsidiary of the Hazel-Atlas Glass Company, as factory manager, where I supervised the construction and operation of their molds and machines, etc., etc., and I was entirely responsible for the manufacture of the ware. In 1934 I became General Production Manager of the Hazel-Atlas Glass Company, being responsible for the manufacture of glassware in all of its plants. In 1937 I became General Factories Manager, begin generally responsible for the operation of the plants, whereas formerly I was responsible only for the manufacture of glassware.

While I was with the Atlas company and with the Oklahoma company, I was, of course, very familiar with all the machines which they used. When I was with the Kearns-Gorsuch company, I also knew all its machines, and was also to some extent familiar with the machines used in other plants of the Hazel-Atlas company. While I was General Production Manager, I saw all machines used in regular commercial production in all plants; I was generally familiar with all of them, and I knew most of them very well. I have continued my knowledge and acquaintance with the Hazel-Atlas machines, although not to the same extent as formerly.

2. Some of the machines used in large commercial production by the Hazel-Atlas company which I have designed, developed, and aided in the designing or developing, are the following:

About 1914, modified Blue forming machine for fruit jars, at Blackwell, Oklahoma; about 1919, a narrow-neck forming machine for soda bottles, in Blackwell, Oklahoma; about 1920, a Lynch narrow-neck forming machine, for fruit jars, at Blackwell; about 1914, a plug feeder, at Blackwell; about 1921, a feeder, of the Brooke stream feeder type, at Blackwell; and there have been many others since 1921.

[fol. 658] 3. The Hazel-Atlas company, including its predecessors and subsidiaries, is one of the oldest manufacturers of glass containers, and it has always been a pioneer in the development and use of automatic machines. The

original Atlas Glass Company, whose plant in Washington, Pennsylvania, is now our Atlas Factory, commenced in 1896, and we still have working in our plants men who were with the Atlas Glass Company, including myself. The Atlas company in 1896 and thereafter manufactured and sold fruit jars, as well as other glass containers. It commenced with a forming machine, the Blue machine, whose fundamental principles are used today in all wide-mouth forming machines. In Oklahoma, from 1913 to 1923, we used modified Blue machines and two types of Lynch machines.

The Kearns-Gorsuch company is very old, going back, as I understand it, to prior to 1875. When I was with it, commencing in 1923, we used several types of machines in regular production, including Lynch machines, O'Neill machines, and several types that were designed by Hazel-Atlas engineers. There are persons now working in the Kearns-Gorsuch plants who have worked there since prior to 1910.

Prior to 1932, more than fifty different types of feeders and forming machines had been designed by Hazel-Atlas company and used in substantial commercial production. For example, the feeders include those shown in our patents of Bowman #1,166,576, filed 1914; Stenhouse, 1,542,013, filed 1922; Stenhouse #1,735,551, filed 1924; Good #1,844,-847, filed 1926; Algeo #1,926,024, filed May, 1932; and others. As for forming machines, there was the 1907 fruit jar machine used at our Atlas factory, the 1908 Class E machine for small pressed ware, the 1908 tumbler machine at Clarksburg, a 1911 Clarksburg tumbler press machine, the 1920 O-A machine, the 1920 A-E machine, the 1921 Miller-Stenhouse machine, the 1923 Miller M-A machine, and others. (The foregoing dates are approximate, within one or two years.) We have built and used in regular commercial production over a hundred of our own forming [fol. 659] machines of various types, and the amount of ware produced by them and sold is in the many billions of units.

In June, 1932, we had working for us in our various plants over four hundred men who had each had more than ten years of practical experience in our plants with the operation of feeders and forming machines.

4. Feeding devices developed by others after they left our employ, and which they claimed all or partial credit for, were the Owens suction machine, for which important

patents were given to Julius and Louis Proegar, employed by C. N. Brady, first president of the Hazel-Atlas Glass Company; the forming machines developed by Frank O'Neill (the O'Neill of the Knox-O'Neill feeders) and Ed Miller; the feeders of George E. Howard (later with the Hartford-Empire Company), of John Harding (later of the Brockway company), E. J. Bridges (now chief engineer and machine designer for Lynch Corporation), Sam Johnson of the Teeple and Johnson machine, Al Daubenspeck, and others.

5. In June, 1932, the Hazel-Atlas company had thirty unexpired patents and eleven applications relating to feeders and had eight unexpired patents and six pending applications relating to forming machines, and lists of them were sent under date of June 18, 1932, to the Hartford company, as I understand.

Exhibit A is a chart, showing one of the typical plunger feeders designed and developed by us, and also a list of plunger feeder inventions and patents. I have indicated those patents which we have used in substantial commercial operation. All the "useful unpatented inventions" have been so used, and have been very valuable to us.

Exhibit B is a similar chart, showing one of our own press and blow machines, designed and developed by us, and patents and inventions relating to forming machines. [fol. 660] Models of a typical Hazel-Atlas feeder and a typical forming machine, have been constructed under my supervision, and have been marked, I understand, Exhibits C and D. We have used and are using in large commercial production such feeders and formers in full size, of course.

Exhibit E is a list of all Hazel-Atlas patents relating to feeders and to formers, which includes the patents in the lists sent Hartford, in Exhibits A, B and C. There are thirty-five feeder patents and thirty-eight former patents.

6. Referring to the patents, patent applications and unpatented processes and improvements which we had in 1932, they represented largely the more than ten years' practical experience we had had in profitably operating feeders and formers, since we commenced in July, 1921, to use a reciprocating plunger feeder in regular commercial operation (on opal ware). We had about thirty in operation in 1923, and the number thereafter increased. Naturally, we had accumulated a great deal of practical knowledge concerning feeder

operation, as we have been engaged in designing, building, operating and improving machines since before 1910.

7. In 1932, for many years previously and to date, we have been spending over $250,000 a year in research, development, engineering and maintenance; and have employed many engaged only in research, development and engineering, about seventy each year from 1925 to date. We have had about seventy-five engaged in maintenance each year from 1925 to 1932, and since then about one hundred and ten.

8. Following the 1932 agreement, there were many visits by Hartford engineers to our plants, where they saw the operations of our feeders, formers, lehrs, furnaces and other machines. Our records show that between July, 1932, and 1941, at least eighteen different men made about twenty-six different visits, sometimes staying several weeks.

[fol. 661] All the Hartford engineers that I have seen, and I have seen many, have been capable of obtaining much useful information in seeing a glass plant in operation and the specific processes and devices, as indeed is true of any experienced glassman. But glass plants are naturally very strongly opposed to allowing their competitors to learn such secrets, and I know that in 1932 when it was proposed that we give such information to the Hartford company, I was very much against it. There was no one connected with our company, especially those in the manufacturing departments, in favor of it and many were strongly opposed.

Little things in glass manufacture are often of great importance in profitable manufacture, because it is a quantity production business, at least with our company, and the constant endeavor is to manufacture as many articles as possible in an hour, at minimum expense. For example, in the feeder chart, Exhibit C, there is mentioned under "Useful Unpatented Inventions" the following: "1. Insulated and downwardly and rearwardly sloping flow spout bottom". This seems insignificant but has proved of substantial advantage, probably increasing our packed output one to two per cent., which would mean at least $250,000 a year.

John W. Carnahan.

Sworn to and subscribed before me this 4th day of April, 1941. Marjorie E. Ford, Notary Public. My Commission expires March 10, 1943. (Notarial Seal.)

[fol. 662] EXHIBIT E TO AFFIDAVIT OF J. W. CARNAHAN

Hazel-Atlas Feeder and Former Patents

Number	Name	Number	Name
F 1,166,576	Bowman	1,858,642	Ross
1,177,589	Algeo	1,864,689	Freese & Dawson
1,191,868	Bowman	1,866,506	Miller
F 1,236,496	Stenhouse	F 1,882,076	Good
1,265,827	Stenhouse	F 1,884,967	Algeo & Ross
F 1,266,011	Good	1,895,824	Stenhouse
F 1,269,597	Good	F 1,898,101	Stenhouse
F 1,274,625	Stenhouse	F 1,904,754	Stenhouse
1,297,412	Stenhouse	1,909,813	Crosbie
1,466,640	Coleman	1,911,870	Algeo & Haub
F 1,534,878	Stenhouse	F 1,926,024	Algeo
F 1,542,013	Stenhouse	F 1,926,122	Stenhouse
1,563,935	Stenhouse	1,935,739	Freese
1,564,497	Stenhouse	F 1,959,506	Stenhouse
F 1,579,364	Henning	F 1,959,811	Brady et al.
1,590,481	Stenhouse	F 1,959,821	Freese
1,590,558	Stenhouse	1,980,047	Freese
1,601,836	Stenhouse	F 1,982,761	Ross
1,671,674	Fithian	F 1,987,249	Stenhouse
1,712,907	Stenhouse	F 2,003,058	Stenhouse
1,735,551	Stenhouse	2,003,064	Beeson
F 1,746,913	Stenhouse	F 2,004,017	Stenhouse
F 1,748,550	Haub	2,004,238	Fithian
F 1,761,372	Stenhouse	F 2,009,017	Ross
F 1,764,832	Flint	2,020,623	Stenhouse
F 1,775,199	Haub	2,022,786	Schwab
F 1,790,984	Greer	2,024,748	Schaffer et al.
1,809,793	Stenhouse	2,026,287	Stenhouse
F 1,809,794	Stenhouse	2,031,739	Schaffer
F 1,816,275	Algeo et al.	2,072,502	Haub
F 1,819,446	Stenhouse	2,077,013	Ruck
1,827,553	Algeo et al.	2,116,284	Ross
F 1,832,331	Stenhouse	F 2,142,006	Schaffer et al.
1,835,172	Miller	2,146,346	Nelson
1,836,444	Carnahan	2,148,220	Ross
F 1,844,847	Good		
F 1,847,276	Stenhouse		
F 1,848,395	Stenhouse		

F = feeder, all others are former patents.
Bowman, 1,166,170, was granted Jan. 4, 1916.
Freese et al., 1,864,689, was granted June 28, 1932.

[fol. 663] [File endorsement omitted]

AFFIDAVIT OF SAMUEL S. ISSEKS IN SUPPORT OF PLAINTIFF'S MOTION FOR ORDER IMPOUNDING FUNDS—Filed April 9, 1941

STATE OF OHIO,
Lucas County, ss:

Samuel S. Isseks being duly sworn says:

1. The payments of $1,677,345.15 alleged, in Par. 4 of the plaintiff's motion for order impounding funds, to have been paid by Hartford-Empire Company to Hazel-Atlas Glass Company for the year 1940 under Section 6 of the General License Agreement of July 1, 1932, were furnished to the Government by the defendant Hartford-Empire Company as representing the true and accurate amount thus paid for the year 1940, and the payments of $1,186,990.79 alleged, in Par. 6 of the plaintiff's motion for order impounding funds, to have been paid by Hazel-Atlas Glass Company to Hartford-Empire Company for the year 1940 under Section 3 of the General License Agreement of July 1, 1932, were furnished to the Government by the defendant, [fol. 664] Hartford-Empire Company as representing the true and accurate amount thus paid for the year 1940.

2. The contract attached hereto as Exhibit A is a true and accurate copy of a copy furnished to the Government by defendant Owens-Illinois Glass Company of the contract between the Owens Bottle Machine Company, The Toledo Glass Company, and Hazel-Atlas Glass Company executed under date of May 20, 1909, upon which your deponent is informed and believes the claims of Hazel-Atlas Glass Company under the Lott patents are based.

(Signed) Samuel S. Isseks.

Sworn and subscribed to before me this 8th day of April, 1941. (Signed) Virginia Long (Virginia Long), Notary Public, Lucas Co., Ohio. My Comm. expires 10-25-42. (Notarial Seal.)

[fol. 665] EXHIBIT A TO AFFIDAVIT OF SAMUEL S. ISSEKS

Agreement made this twentieth day of May, 1909, by and between The Owens Bottle Machine Company, a corporation

of Ohio, hereinafter termed Licensor, The Toledo Glass Company, a corporation of Ohio, hereinafter termed Owner, and Hazel-Atlas Glass Company, a corporation of West Virginia, hereinafter termed Licensee.

WHEREAS said Owner is the owner of the following Letters Patent of the United States of America:

Inventor	Number	Dated	Inventions
Julius Proeger	744,006	Nov. 10th, 1903	Apparatus for manufacture of glassware.
"	744,007	"	Manufacture of glassware.
"	744,008	"	Apparatus for making hollow glass articles.
M. J. Owens	759,742	May 10th, 1904	Method of blowing glass.
"	766,768	Aug. 2nd, 1904	Glass shaping machine.
"	774,690	Nov. 8th, 1904	Glass melting and shaping device.
Wm. E. Bock	854,793	May 28th, 1907	Fire-Polishing machine.
M. J. Owens	854,836	May 28th, 1907	Fire Glazing Machine.
Wm. E. Bock	870,664	Nov. 2nd, 1907	Machine for gathering and shaping glass.
C. W. Schwenzfeier	908,151	Dec. 29th, 1908	Glass Tanks.
Graves & Whittemore	914,823	Mch. 9, 1909	Glass gathering and shaping machines.

and also of sundry other Letters Patent and of sundry pending applications for Letters Patent, of the United States for inventions pertaining to the manufacture of glass and glassware, and expects to make, or cause to be made, applications for, and to obtain, Letters Patent of the United States for other inventions pertaining to such manufacture; and

Whereas said Owner did, on the sixteenth day of October, 1903, grant to said Licensor the sole and exclusive right and license to practice the inventions set forth in, and to [fol. 666] make use of the machines and processes covered by, the said Letters Patent and any and all patents which may result from said applications for patents, for and during the respective terms for which said patents are, or may be granted, in and throughout the United States of America, but not elsewhere, but only for use in the manufacture of glass bottles and jars and parts therefor, together with the right to grant to others sub-licenses, and also a similar license under, and for the full term of, any and all other Letters Patent of the United States for and relating to blowing methods, glass-blowing machinery and the preparation of glass therefor, which, during the seventeen years next following the date of said grant, said owner may acquire or become entitled to, in so far as such patents

relate to, or are applicable to, and only for use in, the manufacture of glass bottles or jars or pars therefore; and

Whereas said Licensor is engaged in manufacturing and causing to be manufactured, machines and devices operating according to or embodying such inventions, or some of them; and

Whereas said Licensee is desirous of acquiring a right and license to avail itself of the inventions, which are the subject matter of the above enumerated Letters Patent, for the purpose and under the conditions hereinafter specified;

Now therefore, for and in consideration of the mutual promises herein contained and the sum of one dollar and other good and valuable considerations, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Said Licensor hereby gives and grants to said Licensee the exclusive right and license to manufacture, under any or all of said Letters Patent, glass articles designated, in the catalogue of said Licensee, hereto annexed, by the signature "J. C. B.", in behalf of said Licensee, and "The Owens Bottle-Machine Co. by W. S. W., Treasurer," on be- [fol. 667] half of said Licensor, but not for the manufacture of any other articles whatsoever.

2. Said Licensor hereby grants to said Licensee, but only for use in the manufacture of the articles above specified, the benefit of any and all improvements, the right to use which may be acquired by it, upon the inventions which are the subject of the Letters Patent, above enumerated, without further remuneration, and to aid and assist said License- in the development and successful operation of the processes and machines which are the subject hereof.

3. Said Licensor hereby agrees to furnish to said Licensee upon reasonable notice as many Owens Bottle-Making Machines, fire-finishers and iron work and mechanism for revolving tank, but not buck-stays, fire brick or clay as may be desired by said Licensee, it being understood that such revolving tanks and fire finishers may be used only with Owens Bottle-making machines and that said Licensee shall pay for what is known as the six-arm machine A. C. Type,

with one fire finisher and iron work and mechanism for a revolving tank, all F. o. b. Toledo, the sum of seventy-five hundred dollars, and for the ten-arm machine the actual cost of same plus ten (10) per centum; payable, in any case, one-third on the giving, and as a part of, hte order therefor, one-third upon the completion thereof ready for shipment, and the remainder within thirty days after receiving from said Licensor notice that the same is installed and in working order, or in case of any machine which said Licensee shall not then be ready to have installed, notice that such machine has been duly delivered and tested and is ready for use.

4. Notwithstanding the right and license hereby granted, said Licensor hereby reserves the right to grant to the H. J. Heinz Company a license to use such machines and other things for, in and about the manufacture of bottles, including the ware for which a license is hereby granted, but for not more than two hundred and fifty thousand gross of bottles annually, such bottles to be sold by said H. J. Heinz Company only when filled with products manufactured by that Company; such right and license to be personal to [fol. 668] the said H. J. Heinz Company and not assignable by it, except to a person, firm or corporation succeeding to its entire business.

5. Notwithstanding the exclusive license heretofore granted, said Licensee has the right and may be required, from time to time, by the Licensor to grant sub-licenses at a rate not less than ten cents per gross, or ten cents per hundred pounds weight, provided always that such sub-licensees shall be required by said Hazel-Atlas Glass Company to maintain minimum selling prices and uniform terms in the marketing of their products, which prices and terms shall be binding also upon said Hazel-Atlas Glass Company. All royalties from the sub-licensees shall belong to said Hazel-Atlas Glass Company.

6. In case of infringement of any of the Letters Patent enumerated above, the Owner, Licensor and Licensee hereby agree to join as complainants in any suit for infringement against any alleged infringing party the expense of the litigation to be borne by the Licensor, and in case the effect of any decree of the court of final jurisdiction, in any such suit, shall be to practically divest the Licensee of the monopoly or exclusive use of the machines or processes as

licensed herein, then the licensee shall pay to the Licensor a sum equivalent to ten cents per hundred pounds of all articles made by it under this license and all royalties received by it from its sub-licensees, from the date hereof to the time of the rendition of such decree less the amount of all dividends which shall have, up to that time, been paid to the Licensor on the five hundred thousand dollars, par value, of the capital stock of said Licensee issued to said Licensor in consideration for this license; and the Licensor shall thereupon return to said Licensee said five hundred thousand dollars, par value, of its capital stock so received by said Licensor, provided such decree, or the divesting of the monopoly hereby granted, shall occur within five years from the date hereof.

7. In case said Licensee shall be sued for infringement on [fol. 669] account of the use of machine, process or apparatus which are the subject of any of the Letters Patent above mentioned, then said Licensor agrees to defend such suit and to hold said Licensee harmless in case any costs or damages are assessed against it.

8. Said Licensee, in consideration of the License granted herein, hereby acknowledges the validity of each and all of the foregoing Letters Patent, and agrees that at no time during the life of said Letters Patent will it question the validity of said Letters Patent or invoke the prior art to limit the scope of any of the claims of any of said Letters Patent. Said Licensee hereby also agrees to assist said Licensor in any suits which shall be brought by said Licensor against such alleged infringing parties or which shall be brought against said Licensee for infringement by it.

9. Any and all inventions made by any officer or employe under the control of said Licensee, constituting an improvement on the inventions covered by any of the Letters Patent hereinbefore enumerated, shall be disclosed to said Licensor, which shall be given the right to acquire each such invention.

10. Without the consent thereto, in writing, of said Licensor, said Licensee will not, during the term of the license hereby granted, add to nor subtract from any of the said machines or basins any mechanism whatsoever, now or hereafter organized or connected therewith by said Licensor, nor make nor allow to be made any change or alteration in the same, nor interfere with the proper operation of the said

machines or basins or any mechanism forming a part thereof, or attached thereto, nor remove nor deface any dates, numbers or inscriptions now or hereafter impressed thereon, or affixed thereto, by said Licensor.

11. Said Licensee shall keep proper books and records of the production, weight and sale of all glass articles made under this license agreement, and of all royalties received by it, and shall make regular monthly reports thereof to [fol. 670] said Licensor. Such books and records shall be at all times during business hours open to the inspection of any officer or accredited agent of said Licensor.

12. In consideration of one dollar to it paid, the receipt whereof is hereby acknowledged, and for other good and valuable considerations to it moving, said Owner assents to the terms of this instrument and confirms the license hereby granted, thereby making the rights of said Licensee hereunder independent of any and all conditions not imposed by, or specified in, this instrument.

13. Each party hereto and the successors and assigns of said Licensor and said Owner, respectively, and the executors, administrators and assigns of said Licensee, will, upon reasonable request, make, execute and deliver all such further written instruments as may be necessary or proper to effectuate the agreements hereby made or undertaken to be made, or for more conveniently evidencing the same.

14. This contract shall inure to the benefit of, and be binding upon, the Licensor, or his successors or assigns, but it may not be assigned by the Licensee except to a corporation or party succeeding to the entire business of the licensee.

15. In further consideration for the license hereby granted, it is agreed that the title to, and ownership of, all machines, basins, mechanism and other things furnished by said Licensor to said Licensee shall, for the period of five years from the date hereof, be and remain in said Licensor, during which period said Licensee shall pay all taxes and assessments on account thereof, and shall itself insure the same to the end that said Licensor shall not suffer injury by loss thereof, or damage thereto; and that from and after the expiration of said five years period, if this agreement shall then remain operative and in full force and effect,

said machines and other things shall belong to, and be the property of, said Licensee, but only for the purposes and [fol. 671] subject to the terms and conditions in this agreement specified.

16. In further consideration for the license hereby granted, it is agreed that so long as said Licensor shall remain the actual owner of all of said five thousand shares of the capital stock of said Licensee, except such thereof as it shall have transferred for the purpose of qualifying persons as directors of said Licensee, said Licensor shall be entitled to name three of the nine members of each Board of Directors of said Licensee and said Licensee agrees that it will cause the three persons from time to time designated therefor by said Licensor to be elected members of its Board of Directors.

17. Said Licensee shall promptly inform said Licensor of the initial location and of every change in the location of each of such machines, tanks and other things, and said Licensor, by any of its officers, or by any agent authorized by it, shall, at all times, have free access to such machines and ample opportunity to observe the operations and product thereof.

18. All rights hereby granted to said Licensee shall terminate upon the violation of any of the agreements, undertakings or conditions on its part to be kept, performed or observed, unless within the period of ninety days after notice to it by said Licensor or by any officer or authorized agent of said Licensor, each and every default, failure or omission shall have been fully remedied, repaired and made good.

In witness whereof the parties herety have severally caused their corporate names and seals to be hereunto signed and affixed by their respective presidents and to be attested by their respective secretaries.

Hazel-Atlas Glass Company, by W. B. Brady, Vice-President; Attest: J. C. Brady, Secretary. The Owens Bottle-Machine Company, by E. D. Libbey, President. Attest: William S. Walbridge, Secretary. (Seal.) The Toledo Glass Company, by William S. Walbridge, President. William H. Boshart, Secretary. (Seal.)

[fol. 672] [File Endorsement Omitted]

[Title omitted]

AFFIDAVIT OF ROBSON D. BROWN ON PLAINTIFF'S MOTION FOR ORDER IMPOUNDING FUNDS—Filed April 10, 1941

STATE OF OHIO,
County of Lucas, ss:

Robson D. Brown, being duly sworn, deposes and says:

I am a Vice President of Hartford-Empire Company, a defendant in this cause. Since April, 1924, I have been resident Patent Counsel for said Hartford-Empire Company.

[fol. 673] Verification of Hartford Answer

I have read the Joint and Several Answer of Hartford-Empire Company et al. filed in this cause on or about March 16, 1940 and took part in its preparation. The statements contained in the said Joint and Several Answer of Hartford-Empire Company are true and correct to the best of my knowledge, information and belief.

The Hartford-Owens Agreement of 1924 Was Mainly Induced by The Owens Lott Patents

Between 1922 and 1924, I was retained as counsel by said Hartford-Empire Company in connection with certain of its patent matters, including two patent infringement suits identified as follows:

The Owens Bottle Co. v. *J. T. & A. Hamilton Co., Hartford-Empire Co., Intervening Defendant* (W. D. Pa., Equity No. 937), involving Lott patents 1,382,993 and 1,382,994 owned by The Owens Bottle Company.

Hazel-Atlas Glass Co. and The Owens Bottle Co. v. *J. T. & A. Hamilton Co., Hartford-Empire Co., Intervening Defendant* (W. D. Pa., Equity No. 938), involving Brookfield patents 836,297 and 883,779 owned by Hazel-Atlas Glass Company, in which The Owens Bottle Company was alleged to have certain exclusive rights.

[fol. 674] I took part in preparing the defense of those suits on behalf of Hartford-Empire Company, in association with senior counsel Messrs. C. P. Byrnes of Pittsburgh,

Pa., John P. Bartlett of New York City and Vernon M. Dorsey of Washington, D. C.

All the counsel for the Hartford company believed that good defenses to the said suits were available, but were unable to advise the Hartford company that they were confident of success. At least two of the said counsel, Messrs. Byrnes and Bartlett, advised the Hartford company that it was unsafe to proceed with the suits, particularly the Lott suit, and that it would be wise to settle them.

The said suits on the Lott and Brookfield patents were set for trial during the month of April, 1924. The Owens counsel were insisting upon trying the suits at that time, and refused to agree to any continuance although we endeavored to obtain such a continuance. It was recognized by the Hartford company's counsel that consequences of defeat in those suits, particularly in the suit on the Lott patents, would be fatal to the Hartford company, inasmuch as the patents in suit covered all the glass feeders which were then being used by the Hartford company's licensees. [fol. 675] The Hartford company's counsel, therefore, advised, and their principals agreed, that the severe terms of the Hartford-Owens 1924 Agreement be accepted.

The Lott patents did not disclose the Hartford system of suspended-charge feeding; but they disclosed and claimed certain combinations of mechanical elements which were vital and necessary parts of all the Hartford feeders then in use, together with certain combinations of method steps which were involved in the operation of those feeders. Thus the Lott patents, unless disposed of by a successful defense in litigation or by a license agreement, stood in the way of the further operation of all then-existing Hartford feeders. On the other hand, the Owens company had no rights from Hartford to practice the Hartford system of suspended-charge feeding which then, as now, was the preferred way of feeding molten glass to forming machines. The Hartford company was recognized as entitled to patents on that system, although the more important patents had not yet issued.

A deadlock was thus presented. The Owens and Hartford companies would each block the other from furnishing or using the most efficient feeders. A cross-license agreement was the obvious solution for both companies. It was [fol. 676] highly necessary for the Hartford company, since the Hartford company was not justified in running

the risk of total extinction which would follow loss of the suits brought by Owens. As before stated, the Hartford company's counsel were unable to assure it of success in those suits.

I took part in the final drafting of the April 9, 1924 agreement between Hartford-Empire Company and The Owens Bottle Company, a copy of which is Government's Exhibit No. 55 in this cause. I know that, as stated by Mr. Herbert Knox Smith on page 21 of his memorandum dated February 18, 1930, a copy of which is Exhibit No. 388 in this cause, the Lott patents of the Owens company

"finally became the main inducement in forcing us to go into the 'Owens general agreement', under which we have paid Owens large sums up to date and will continue to pay still more in the future."

When the Hartford-Owens agreement was executed in 1924, it was the definite understanding of the Hartford company's officers and counsel that the Hazel-Atlas company had no rights whatever under these Lott patents.

As a part of the settlement between the Hartford and Owens companies, a consent decree in the above-mentioned Owens-Hamilton suit on the Lott patents was entered in [fol. 677] the said suit, wherein the defendants Hamilton and Hartford companies acknowledged the validity of the said Lott patents and were enjoined from infringement thereof.

The Hartford-Hazel-Atlas License Agreement of 1932 Was Induced in Part by a Claim of Hazel-Atlas to Exclusive Rights Under the Owens Lott Patents.

I took part in the negotiations and drafting of the General License Agreement between Hartford-Empire Company and the defendant Hazel-Atlas Glass Company, dated July 1, 1932, a copy of which is Exhibit No. 142 in this cause. During those negotiations, there was brought to our attention a situation as to the Lott patents which presented serious danger to the Hartford company and its licensees. Notwithstanding the understanding of the Hartford company in 1924, as above stated, that the Hazel-Atlas company had no rights under the Lott patents (which patents, as stated, had been the principal reason for the Hartford company making the 1924 agreement with Owens), it was

revealed to me and to my associates during the 1932 negotiations that the Hazel-Atlas company was asserting that it had a substantial claim to exclusive rights under the Lott patents for certain fields of glassware manufacture. [fol. 678] We were advised that the Hazel-Atlas and Owens companies had made various agreements, beginning in 1909, whereby the Owens company granted to the Hazel-Atlas company exclusive rights for certain fields of ware under inventions owned by the Owens company; that there was a controversy between the Owens and Hazel-Atlas companies as to the extent of the Hazel-Atlas exclusive rights in the Owens patents, Hazel-Atlas claiming that such exclusive rights included the Lott patents; and that the Owens counsel regarded this claim of Hazel-Atlas as a serious matter, although they considered that the Hazel-Atlas company's claim ought not to be sustained in case of litigation.

By 1932, the Hartford company had sub-licensed a large number of glassware manufacturers under the Owens Lott patents to manufacture glassware of the kinds which the Hazel-Atlas company claimed to have exclusive rights to manufacture under the Lott patents. In so licensing, the Hartford company had agreed to indemnify its licensees and hold them harmless against some or all claims of third parties for patent infringement.

It was thus at once apparent that if the Hazel-Atlas company should establish its claim against the Owens company for exclusive rights under the Lott patents, the Hazel-Atlas company, as exclusive licensee, could prevent the Hartford company from thereafter granting any license under the Lott patents for the manufacture of glassware within the [fol. 679] Hazel-Atlas exclusive fields. This meant that the Hartford company could not grant any license whatever for the use of its then-existing machinery in the manufacture of such glassware, because, as before stated, the inventions claimed in the Lott patents were essential parts of the Hartford company's glass feeders, and because the Hartford company was estopped to deny the validity of the Lott patents and infringement thereof by the Hartford company's feeders by reason of the before-mentioned consent decree entered in the Owens-Hamilton Lott suit in 1924.

Moreover, if the Hazel-Atlas company established its claim for exclusive rights under the Lott patents, it could proceed against the Hartford company and against the

Hartford company's licensees for past infringement of the Lott patents within the Hazel-Atlas exclusive fields. If the Hazel-Atlas claim were sustained, this would mean that rights under the Lott patents in the Hazel-Atlas exclusive fields had been wrongfully licensed by the Owens company to the Hartford company and by the Hartford company to its licensees. The Hartford company would have no defense to such infringement suits because of the said consent decree of 1924, by which the Hartford company acknowledged the validity of the Lott patents and their infringement by the Hartford company's feeders. It has [fol. 680] been estimated that such infringement suits against the Hartford company and its licensees might have resulted in a collection by the Hazel-Atlas company of damages of as much — $2,000,000. for the portion of infringement damages for which the Hartford company was liable as the manufacturer and licensor of its feeders and, as surety, under its contracts with its licensees. It has also been estimated that the Hazel-Atlas company might have recovered further damages amounting to as much as $2,000,000 directly from licensees of the Hartford company for that portion of the infringement damages for which the Hartford company was not responsible to its licensees.

The danger to the Hartford company's business, thus presented by the claim of the Hazel-Atlas company against the Owens company, was an important reason for the entering by the Hartford company into the said agreement with the Hazel-Atlas company dated July 1, 1932.

Other Hartford Reasons for Making the Hazel-Atlas License Agreement of 1932

There were other important reasons inducing the Hartford company to enter into the said General License Agreement with the Hazel-Atlas company, dated July 1, 1932. [fol. 681] These included (1) technical advantages made available by the Hazel-Atlas company to the Hartford company and its licensees, (2) patent licenses, (3) settlement of litigation, and (4) financial benefits of several kinds. The following is a summary of the facts as to these various inducements, and their advantages to the Hartford company:

(1) *Technical advantages*, i.e., the right to receive assistance and advice from the large Hazel-Atlas staff of

engineers and technically trained employees who then constituted, and now constitute, one of the largest technical organizations in the glass industry, and whose knowledge and experience were placed at the disposal of the Hartford company by Section 6 of the General License Agreement.

The Hartford-Empire Company realized that this store of technical knowledge and experience might well be of large benefit to the Hartford-Empire Company and its licensees in two ways, first as direct technical benefit in the construction and operation of the Hartford company's glass-working machinery, and second as protection for Hartford company and its licensees against infringement of such patents as might result from the work of the Hazel-Atlas corps of engineers and other technically trained em- [fol. 682] ployees. It was of great advantage to the Hartford company to insure that the Hartford company and its licensees would be free to use improvements devised by the Hazel-Atlas technical employees, whether patented or unpatented.

(2) *Patent licenses,* i.e., license rights under all of the numerous patents owned by the Hazel-Atlas company relating to "licensed inventions" as defined in the said General License Agreement, including both the patents then in existence and additional patents which the Hazel-Atlas company would acquire during the life of the agreement.

The value to Hartford-Empire Company of license rights under the Hazel-Atlas patents could not be measured exactly in 1932 when the General License Agreement was made. The Hazel-Atlas company had informed the Hartford company as to the "licensed invention" patents then owned by the Hazel-Atlas company, but the Hartford company did not know what additional patents the Hazel-Atlas company would obtain during the life of the agreement. It knew there would certainly be such patents; but their number, scope and importance could not then be predicted, and cannot even now be fully ascertained, because the agreement still has several years to run. Nor did the [fol. 683] Hartford company know in 1932 what machinery it would design and furnish to the Hartford licensees, or the extent to which it would be found necessary or desirable to incorporate, in such machinery, features covered by then-existing or future Hazel-Atlas patents. For

these reasons, and for the further reason that it was likewise impossible to calculate with exactness the value to the Hartford company of the other considerations moving to it from the Hazel-Atlas company (release from the Hazel-Atlas claim under the Lott patents, and technical assistance), it was agreed that the Hartford company would pay for its patent license, and for the other considerations, a specified portion of its income from "licensed inventions" during the life of the agreement.

As it has thus far turned out, the Hartford company and its licensees have made use of the license rights under Hazel-Atlas patents by incorporating in machinery furnished or otherwise licensed by the Hartford company features covered by the following Hazel-Atlas patents at least:

Algeo, 1,177,589—for forming machine combinations; claims 1, 2, 3. Used in the Hartford N. N. (Narrow-Neck) forming machines.

[fol. 684] Stenhouse 1,590,558—for a timing mechanism; claims 1, 2, 5, 7, 10, 11, 20 and 21. Used in various Hartford machines.

Stenhouse 1, 601,836—for forming machine combinations, claims 27, 38, 39, 42, 45. Used in Ed. Miller (Lynch) machines, J. P. series.

Stenhouse 1,712,907—for forming machine combinations; claim 6. Used in the Hartford No. 12 forming machines.

Miller 1,835,172—for forming machine combinations; claims 15, 16, 17, 19. Used in the Hartford No. 12 forming machines.

Miller 1,866,506—for forming machine combinations; claims 1, 2, 3, 4. Used in the Hartford No. 12 forming machines.

Stenhouse 2,020,623—for feeder delivery combinations; claims 1, 2, 3, 4, 5, 6. Used with Hartford feeders and Hartford I. S. forming machines in manufacturing paneled bottles.

[fol. 685] (3) *Settlement of litigation between the Hartford and Hazel-Atlas companies.* Such litigation had been in progress almost continuously from 1917 to 1932 and included the suit against Hartford-Fairmont Company on the Brooke patent filed in 1917, in which the Hazel-Atlas company was interested; the above-identified suit filed in 1923 on the Brookfield patents by the Hazel-Atlas and Owens companies against the Hamilton and Hartford companies;

a suit brought in 1926 by the Hartford company against The Kearns-Gorsuch Company, a subsidiary of the Hazel-Atlas company, on four patents; another suit brought in 1928 by the Hartford company against the Hazel-Atlas company on the Peiler "stuffing" patent; a third suit brought by the Hartford company against the Hazel-Atlas company in West Virginia on three patents; and numerous Patent Office interference proceedings. This extensive litigation had been extremely costly and burdensome to the Hartford company.

(4) *Financial benefits.* (a) A financial benefit resulting from the cancellation of the right theretofore held by the Owens company to the use, without royalty, of a specified number of feeders and forming machines covered by patents involved in the Hartford-Owens agreement of 1924, which right had been evaluated in that 1924 agreement as [fol. 686] being worth $440,000 per year, as Mr. F. Goodwin Smith testified on pages 593 and 594 of the Transcript in this cause.

(b) Another financial benefit consisting in the increase from $600,000 to $850,000 per year of the amount retained by the Hartford company out of income from "licensed inventions" before any division, as Mr. Smith also testified.

(c) A further financial benefit (expected at the time but thereafter not realized) that the Hazel-Atlas company would pay royalties to the Hartford company far in excess of the payments to be made by the Hartford company to the Hazel-Atlas company under the 1932 agreement. Estimates made at the time indicated that the Hazel-Atlas company would pay royalties to the Hartford company amounting to about $680,000 per year, and that the Hartford company would pay to the Hazel-Atlas company, for the rights and other advantages received from the Hazel-Atlas company, a substantially smaller sum per year. Largely on account of the repeal of the prohibition amendment to the Federal Constitution and the consequent increase in the production and sale of containers for alcoholic beverages, this particular expectation has not been realized. The Hazel-Atlas company has paid to the Hartford company royalites exceeding the payments estimated in 1932, [fols. 687-688] but the Hartford company's total income from "licensed inventions" has grown at a still greater rate, so that, contrary to expectation, the total payments

by the Hartford company to the Hazel-Atlas company have exceeded the royalty payments by the Hazel-Atlas company to the Hartford company.

(Signed) Robson D. Brown.

Subscribed and sworn to before me this 8th day of April, 1941. (Signed) Richard S. Cole, Notary Public, Lucas Co., Ohio. (Notarial Seal.)

[fol. 689] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

OBJECTIONS OF DEFENDANT, HARTFORD-EMPIRE, TO PLAINTIFF'S REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ORDER IMPOUNDING FUNDS—Filed May 7, 1941

The defendant, Hartford-Empire Company, objects to each of plaintiff's requests for findings of fact and conclusions of law except such as are specifically requested by this defendant in the event the Court deems any findings necessary, for the reason that:

1. Said findings and conclusions *are full findings and conclusions on the merits*, although stated in plaintiff's request for findings and conclusions to have been *prima facie* established.

2. Said findings and conclusions are contrary to established law. (See 112 F. (2d) 894.)

[fol. 690] 3. No reason exists to justify said findings and conclusions as this defendant has no right of appeal, and *findings and conclusions are necessary only for proper disposition of an appeal.*

4. *Specific Objections*

Finding of Fact No. 4 is not supported by proof.

Finding of Fact No. 6 is not supported by proof.

Finding of Fact No. 8—That part of this finding "continuously" and "Hartford felt keenly pressed by the com-

petition of Hazel-Atlas in machinery used in the manufacture of glassware" is not supported by proof.

Finding of Fact No. 9—That part of this finding "as weapons to force Hazel-Atlas to take a license from Hartford" is not supported by proof. Said patents were desired to stop Hazel-Atlas from using Hartford-Empire inventions illegally.

Finding of Fact No. 10—is a conclusion which is not supported by proof.

Finding of Fact No. 11—is not supported by proof.

Finding of Fact No. 15—in the use of the word "partnership" it is a conclusion not supported by proof.

[fol. 691] *Finding of Fact No. 16*—is erroneous to the extent that suction inventions of Hartford-Empire were not included in Hazel-Atlas contract and "tumblers, globes and chimneys" not exclusive to Corning Glass Works.

Finding of Fact No. 17—is erroneous to the extent that Corning Glass Works was granted an "invention license".

Finding of Fact No. 20—is erroneous to the extent that suction inventions of Hartford-Empire not included in Hartford-Empire-Owens General License Agreement.

Finding of Fact No. 25—The use of the word "independents" and "Hartford systems" is uncalled for and should be omitted.

Findings of Fact No. 27 (1 to 5 inc.)—is not supported by a preponderance of proof, even up to the present time. This finding embraces controversial matters which should not be adjudicated even preliminarily under the law of the case.

Finding of Fact No. 31—is erroneous and not supported by proof in that there is

(a) No combining of patents under joint control.

(b) No limitations and restrictions under joint control. [fol. 692] The finding is also erroneous in that all restrictions and limitations upon Hartford's licensees, present and prospective, have been removed.

Finding of Fact No. 32—is erroneous (a) as to Maywood and Brockway; (b) Hazel-Atlas did not collaborate in acquisition of the Headley & Thompson patents; (c) Hazel-Atlas did not share in settlement from "numerous" licensees.

Finding of Fact No. 33-38 inc.—are erroneous and not supported by proof.

Conclusion of Law No. 1—is erroneous (a) as the *status quo* will not be preserved by the temporary restraint and impounding order sought by plaintiff pending the final determination of this cause; and (b) a "serious question" as to the legality of the July 1, 1932 agreement has not been raised by the evidence.

Conclusion of Law No. 2—is erroneous as the *status quo* will not be preserved by impounding of the payments.

Conclusion of Law No. 3—is erroneous as no *prima facie* showing of the illegality of the payments by Hartford to Hazel-Atlas under Section 6 of said General License Agreement and by Hazel-Atlas to Hartford under Section 3 thereof has been established.

[fol. 693] *Conclusion of Law No. 4*—is erroneous in part as there will be no irreparable injury to the competitors of Hazel-Atlas or the "public interest."

Conclusion of Law No. 5—is erroneous as great injury and inconvenience to Hazel-Atlas and Hartford will result through issuance of the Impounding Order. In any event, said conclusion should be modified as only the excess of payments moving between Hartford to Hazel-Atlas should be impounded.

Respectfully submitted, (signed) S. S. Wall, Thomas G. Haight, Edgar J. Goodrich, Arthur C. Beaumont, of Counsel.

Toledo, Ohio, May —, 1941.

[fol. 694] [File endorsement omitted]

[Title omitted]

AFFIDAVIT OF THEODORE L. CHAMPEAU ON PLAINTIFF'S MOTION FOR ORDER IMPOUNDING FUNDS—Filed May 7, 1941

STATE OF OHIO,
County of Lucas, ss:

Theodore L. Champeau, being duly sworn, deposes and says:

I am, and since February 1937, have been Treasurer of the Hartford-Empire Company, a defendant in this case. From May 1924 until February 1937 I was Assistant-Treasurer of said Company. From October 1917 until January 1, 1923 I was Cashier of Hartford-Fairmont Company, and from the latter date until May 1924, I was Cashier of Hartford-Empire Company. During all of the period from October 1917 up to the present time, I have been in direct charge of the financial records of the Company.

[fol. 695] Since 1932, in comparison to years prior thereto, the earnings of the Company have been large, due to the termination, either by settlement agreement or judicial decision, of the greater part of extensive patent interferences and litigation in which the Company was involved, the increased number of machines owned by the Company and operating under license, and to the greatly increased production of glassware by the Company's licensees. Net earnings of the Company, and dividends paid during that period are as follows:

	Net Earnings	Dividends Paid	Percentage of Earnings
1932	$326,965	$331,200	.101%
1933	637,731	414,000	.649%
1934	689,155	597,933	.867%
1935	964,833	828,000	.858%
1936	1,682,420	1,104,000	.656%
1937	1,934,120	1,844,437	.953%
1938	1,443,264	1,285,625	.89%
1939	1,929,227	1,636,250	.848%
1940	1,910,996	1,528,150	.799%

Throughout this period an outstanding cause impelling the distribution as dividends of the greater part of the Company's net earnings has been certain provisions of the Revenue Acts, called to the attention of the Company's officers from time to time by outside accountants and Coun-

[fol. 696] sel, as well as by the Company's regularly em-

ployed attorneys and your affiant. Three such provisions, called to the attention of affiant and other officers of the Company, are the following:

1. Sec. 500, I. R. C.—*"Surtax on Personal Holding Companies."*

A very important provision of the Revenue Code called to attention of the Company's officers as potentially applicable and making necessary distribution by dividends of the greater part of the Company's annual earnings is the above cited Section (first written into the Revenue Law in 1934), which lays a punitive tax upon the undistributed profits of "personal holding companies."

This corporation has not been declared by the Commissioner of Internal Revenue to be a "personal holding company", as defined in the Statute. However, various aspects of the Company's income and the ownership of its stock have been investigated by the Commissioner's representatives from time to time and the question considered at conferences between the Commissioner's representatives and Counsel for the Company.

[fol. 697] Should this Company be classified as a "personal holding company" within the meaning of the Act, affiant is advised there would be laid against it, in addition to the usual taxes paid by corporations upon their earnings, a punitive tax of 65% upon the first $2,000.00 of undistributed net income as defined in the statute, and of 75% upon the balance.

The Company's officers have been advised that it is quite possible that a slight change by the Congress in the statutory definition of "personal holding company" income might effect inclusion of this company's earnings therein, and that certain changes in ownership of the Company's outstanding shares might result in its classification as a "personal holding company" from that standpoint. Since the Company has no control over either of these contingencies, it has been advised to, and has, distributed the bulk of its earnings each year, so as to avoid the risk of having imposed upon it the punitive taxes applicable to "personal holding companies."

2. Sec. 14, Revenue Act 1936—*"Undistributed Profits Tax."*

The Company was further impelled to make large dividend distributions during 1936 and 1937 by the new pro-

[fol. 698] visions of the Revenue Act of 1936 designed to force disgorgement of corporate earnings, laying a tax ranging from 7% to 27% upon *undistributed* profits as defined in the statute. The computation of the potential liability of this Company thereunder, being largely a problem of accounting, was well recognized by affiant and by him reported to other executive officers of the Company who recommended to the Directors the declaration of dividends in amounts sufficient to avoid imposition of this additional tax at the highest rates.

While the undistributed profits tax as such was modified by the Revenue Act of 1938, nevertheless, in its present form, its provisions serve as an incentive toward substantial distribution as affiant is well aware.

Under the 1938 Act (in force until 1940) the normal tax on corporate earnings, plus defense tax, totaled 19%. Against this was allowed a statutory "dividends paid credit" of 2½% upon all distributed earnings, thus reducing the normal tax on distributed profits to 16½%.
[fol. 699] In affiant's opinion the saving thus effected by dividend distribution of profits was a substantial factor in determining the amounts which were distributed as dividends in 1938 and 1939.

3. Sec. 102: "*Surtax on Corporations Improperly Accumulating Surplus.*"

This section, which is a continuation of provisions contained in the Revenue Acts since 1921 and designed to force the distribution of corporate earnings by means of dividends which may be taxed upon receipt by the individual shareholders, lays a punitive tax upon the net income of a corporation.

"formed or availed of for the purpose of preventing the imposition of the surtax upon its shareholders * * * through the medium of permitting earnings or profits to accumulate instead of being * * * distributed."

This tax (in addition to all other usual corporate taxes and itself increased by the defense tax) is laid at the rate of 25% of undistributed net income up to $100,000. and at the rate of 45% in excess of that amount. (Under prior Revenue Acts the rate was 50% of undistributed net income from 1924 to 1931 inclusive, and thereafter the rates were as above stated).

The Company's officers have been warned repeatedly by counsel to distribute the greater part of the Company's [fol. 700] earnings each year, in order to avoid any possibility of a charge against the Company under this provision of the Revenue Act. They have been advised that the basic test of the applicability of this punitive tax against a corporation is whether, through failure to declare dividends, the profits earned are permitted to accumulate beyond the reasonable needs of the business. It has been pointed out to them that since the bulk of the Company's long-fought and expensive patent litigation has been concluded and its research and development laboratories and plant service activities expanded about to the ultimate point where efficient management can obtain from them the greatest benefit to the Company's licensees, that only a part of the Company's earnings are now required for the current needs of its business, and that the balance should be distributed as dividends.

Consequently, each year since 1932, as disclosed by the table above, the greater part of the Company's profits has been distributed to its shareholders, not only to make return to them upon their investment which for many years lay fallow, but to comply fully with the intendment of Sec. 102 of the Revenue Act.

[fol. 701] Under the present law, and the Commissioner's Regulations now in force, the failure of *any* corporation to distribute as dividends at least 70% of its earnings in any year may constitute a prima facie finding that the company has accumulated profits beyond the reasonable needs of its business and for the interdicted purpose of preventing the imposition of surtax upon its shareholders. The whole burden of disproving that finding is put upon the taxpayers, which means expensive litigation. The Commissioner has instructed his agents to examine minutely and report upon *every* corporation which has distributed less than 70% of its yearly earnings.

That Regulations and the Commissioner's instructions to his agents are indicative of the Treasury's drive, as publicly declared in press releases of statements made before Congressional Committees, to force the disgorgement of corporate earnings. Existing tax rates are high. (Present normal and defense taxes on corporate incomes total 24%; in addition excess profits taxes are levied on a sliding scale and part of this Company's income in 1940 was subject to

tax at 45%). It seems certain that those rates will be sub-
[fol. 702] stantially increased within the current year. So long as high rates continue and the Treasury's view to forcing distribution of corporate earnings continues, this Company must continue to distribute by way of dividends the greater part of its earnings each year.

Liquid Assets

The following statements show the quick assets of the Company, readily convertible into cash, less current payables as of December 31, 1940 and March 31, 1941:

[fol. 703] Hartford-Empire Company
Liquid Assets

	1940 Dec. 31	1941 March 31
Cash	$2,028,046.01	$2,470,597.15
Marketable Securities	2,194,040.10	2,082,101.63
Accounts Receivable	930,141.75	881,864.64
Notes Receivable	119,529.64	127,000.96
Accrued Interest Receivable	4,329.83	6,037.83
Inventory—Finished Machines & Parts	583,311.13	541,593.46
" —Shop Work in Process	26,382.08	53,593.09
Stock Purchase Subscriptions	43,050.00	40,160.00
Unexpired Insurance	38,673.50	58,753.15
Total Liquid Assets	$5,967,504.04	$6,261,701.91
Current Payables		
Accounts Payable	$337,191.08	$253,229.82
Royalties Payable	440,709.63	428,568.44
License Rights—Annual Payment	112,500.00	112,500.00
Taxes Accrued	868,345.45	889,450.16
Dividend Accrued	.....	235,100.00
Total Current Payables	$1,758,746.16	$1,918,848.42
Net Liquid Assets	$4,208,757.88	$4,342,853.49
Straight Cash Items:—		
Cash—Current & Reserve	$2,028,046.01	$2,470,597.15
Marketable Securities	2,194,040.10	2,082,101.63
Total Straight Cash Items	$4,222,086.11	$4,552,698.78

In addition to the Liquid Assets above listed, the Company owned as of March 31, 1941:—

1) Licensed Machines (less depreciation)	$2,667,100.67
2) Land, Buildings and Equipment (less depreciation)	725,610.98

[fol. 704] Accounting Method

The Company's records reflect the accounting of payments required under the Hazel-Atlas-Hartford-Empire Contract of July 1, 1932, as follows:

(a) Each month all royalties accrued are credited to various royalty income accounts and charged to licensees.

(b) From this gross royalty total is deducted all royalties accrued under license of "non-gob feeder" machines, such as lehrs, stackers, and other equipment not included in "licensed inventions" within the meaning of that term as used in the contract.

(c) From this corrected total is deducted the monthly pro-rata portion (1/12) of $850,000. The result thus obtained is the monthly "divisible income" as defined in the contract.

(d) One-third of the monthly "divisible income" thus obtained is deposited in bank in a special account standing in the name of Hartford-Empire Company, and royalty payable settlements with Hazel-Atlas are made from this account quarterly.

[fol. 705] (e) Each month Hartford-Empire sends to Hazel-Atlas a statement showing the credits to its account, the funds for which are deposited as stated in (d) above.

(f) Each month Hazel-Atlas sends to Hartford-Empire licensee's weekly reports in regular form used by all licensees showing royalties due Hartford-Empire on account of Hazel-Atlas' production on licensed machines.

(g) Cash settlements are made between the two companies by Hazel-Atlas paying Hartford-Empire monthly for sums due Hartford-Empire reflected by weekly production reports in (f) above, and Hartford-Empire paying to Hazel-Atlas the sum due it quarterly, as reflected by reports as stated in (e) above.

Taxable Status of Accounts

(a) Hartford-Empire's accounts are kept on the accrual basis.

(b) With the approval of the Bureau of Internal Revenue, the one-third share of Hartford's "Divisible income" [fol. 706] payable to Hazel-Atlas is not included in Hartford's taxable income, but is treated as a "collection" item, that is; as money belonging to Hazel-Atlas, collected for it by Hartford and by Hartford paid over to Hazel.

(c) With the approval of the Bureau of Internal Revenue all royalties accruing to Hartford-Empire from

Hazel-Atlas (reported monthly as stated in (f) above) are included in Hartford's annual taxable income and income, defense, and excess-profits taxes are paid thereon by Hartford as by statute required.

Theodore L. Champeau.

Sworn to and subscribed before me, a Notary Public, this 7th day of May, 1941. G. M. Reswick, Notary Public, Lucas County, Ohio. (Seal.)

[fol. 707] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

FINDINGS OF FACT IN SUPPORT OF ORDER IMPOUNDING FUNDS—Filed May 9, 1941

Upon the pleadings, stipulations, admissions and affidavits of the parties and the evidence heretofore adduced, the court finds the following facts have been *prima facie* established:

1. The defendant Hartford-Empire Company is a corporation organized and existing under the laws of the State of Delaware, with its principal office at Hartford, Connecticut, engaged in the acquisition and development of inventions and patents relating to glassware and the leasing and licensing of machinery used in the manufacture of glassware.

2. The defendant Hazel-Atlas Glass Company is a corporation organized and existing under the laws of West Virginia, with its principal office at Wheeling, West Virginia, and, with its subsidiaries, is the second largest glass container manufacturer and distributor in the United States.

3. For several years prior to July 1, 1932, Hazel-Atlas was in competition with various licensees of Hartford in the manufacture and sale of glassware.

4. For several years prior to July 1, 1932, Hazel-Atlas was in competition with Hartford with respect to machinery used in the manufacture of glassware.

5. Between 1925 and 1932, Hartford was pressed by the competition of Hazel-Atlas with respect to machinery used in the manufacture of glassware and sought unsuccessfully to induce Hazel-Atlas to take a license under the Hartford patents. Exs. 79, 125.

6. In 1928, Hartford brought suit against Hazel-Atlas in the United States District Court for the Western District of Pennsylvania, for infringement of its so-called "stuffing patent" No. 1655391. Hazel-Atlas obtained a decision in the District Court but this decision was reversed by the Circuit Court of Appeals for the Third Circuit which, on May 5, 1932, held by a two to one decision that the Hazel-Atlas feeder infringed the Hartford patent.

[fol. 708] 7. On the next day, the President of Hartford wrote to the President of Hazel-Atlas suggesting a discussion of plans for a relationship between Hazel-Atlas and Hartford. Negotiations followed which culminated on July 21, 1932, in the execution of two agreements between Hazel-Atlas and Hartford. Exs. 142, 143.

8. Hazel-Atlas was willing to take a license but insisted on participation in the royalties received by Hartford from its competitors and other licensees of Hartford.

9. Under the General License Agreement between Hartford and Hazel-Atlas dated July 1, 1932 (Ex. 142), Hazel-Atlas paid Hartford $1,000,000 and Hartford granted Hazel-Atlas a release from past infringements of Hartford patents together with a nonexclusive, nondivisible license until January 3, 1945, under Hartford's feeder and former patents. Excluded from the license was the right to produce bulbs, tubing and cane, optical, signal and heat resisting ware, certain tumblers, globes and chimneys, exclusive rights to all of which had been granted to defendant Corning Glass Works. Other exclusions were marbles, flat glass, vacuum and milk bottles, and certain ware made on Tucker and Reeves types of machines. Sec. 3 required Hazel-Atlas to pay Hartford royalties on glassware manufactured under the licensed inventions and provided that if Hazel-Atlas did not use licensed inventions for at least four-fifths of its glassware, Hartford's payments to Hazel-Atlas under the contract should be reduced. Hazel-Atlas gave Hartford a

release from claims for past infringement together with a nonexclusive and divisible license until January 3, 1945, under Hazel-Atlas feeder and former inventions, subject to specified exclusions, in consideration of which, and of Hazel-Atlas' agreement to furnish Hartford engineering and technical advice, Hartford agreed to pay Hazel-Atlas one-third of Hartford's net income, defined as the excess over $850,000 of its income from licensed inventions.

10. Under the Hartford-Hazel-Atlas General License agreement dated July 1, 1932, Hazel-Atlas was given a so-called "invention license," being the right to make and use Hartford inventions, which rights were not accorded to other Hartford licensees except Owens-Illinois Glass Co. and, to a limited extent, Corning Glass Works. (Tr. 1149-1150.)

11. Under this same agreement, Hazel-Atlas was permitted to retain title to its machines and equipment, which right was not accorded to other licensees, with very few exceptions. (Tr. 76-77, 709-710, 722.)

[fol. 709] 12. At the time of the decision against Hartford in the district court, there were a substantial number of manufacturers of glassware who were not licensees of Hartford. (Tr. 519-520.)

13. Beginning shortly after the execution of the above agreements on July 21, 1932, many of those who did not have Hartford licenses agreed to come in and take a Hartford License. (Tr. 629-760.)

14. Under Sec. 6 of the General License Agreement between Hartford and Hazel-Atlas, payments have been made to Hazel-Atlas as follows:

7/1/32—12/31/32	$ 180,404.05
1933	715,798.15
1934	877,003.58
1935	1,006,687.67
1936	1,303,301.12
1937	1,518,117.97
1938	1,245,739.61
1939	1,509,633.48
1940	1,677,345.15

15. Under Sec. 3 of the Agreement, payments have been made to Hartford from Hazel-Atlas as follows:

7/1/32—12/31/32	$ 217,899.95
1933	664,161.19
1934	827,853.88
1935	920,867.43
1936	1,139,316.08
1937	1,240,853.52
1938	1,004,293.05
1939	1,153,372.63
1940	1,186,990.79

16. The excess or deficiency of the payments moving from Hartford to Hazel-Atlas over or under those moving from Hazel-Atlas to Hartford has been as follows:

7/1/32—12/31/32	$ 37,495.90
1933	51,636.96
1934	49,149.70
1935	85,820.24
1936	163,985.04
1937	277,264.45
1938	241,446.56
1939	356,260.85
1940	490,354.36

17. The General License Agreement between Hazel-Atlas and Hartford dated July 1, 1932, and the Supplemental Agreement between the same parties of even date as amended are still in effect.

18. As a result of said contracts, Hazel-Atlas has been confirmed in a dominant position over its competitors.

19. In the presentation of this motion, the Government has charged and Hartford has not denied that substantially all of the net earnings of Hartford have been distributed to its stockholders as dividends during recent years.

[fol. 710] 20. An order directing both Hartford and Hazel-Atlas to deposit with the Clerk of this Court all payments hereafter falling due by each of said parties to the other pending final determination of this cause will preserve the status quo, stop the continuance of further injury to Hazel-Atlas' competitors and to the public interest, and insure to the Court sufficient funds to dissolve Hartford and incorpo-

rate competing companies if that ultimately becomes necessary, all without undue injury to either of said parties.

21. The inconvenience to Hazel-Atlas and Hartford through issuance of the Impounding Order will be inconsiderable as compared to the injury to the public if the order is not issued.

Frank L. Kloeb, U. S. District Judge.

[fol. 711] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

CONCLUSIONS OF LAW IN SUPPORT OF ORDER IMPOUNDING FUNDS—Filed May 9, 1941

The Court makes the following conclusions of law in connection with its action upon Plaintiff's motion for an order impounding funds:

1. The pleadings, stipulations, admissions and affidavits of the parties and the evidence heretofore adduced having raised a serious question as to whether at the termination of this cause the General License Agreement of July 1, 1932, between defendants Hartford-Empire Company and Hazel-Atlas Glass Company may not be declared illegal and cancelled, it is required by equity and justice that the status quo be preserved pending the final determination of this cause.

2. There has been substantial proof of the allegations of the complaint heretofore adduced in the trial and the Government has made a prima facie showing of the illegality of the payments by Hartford and Hazel-Atlas under Sections 3 and 6 of said General License Agreement.

3. The continuance of payments by Hartford to Hazel-Atlas under Sec. 6 of said agreement and by Hazel-Atlas to Hartford under Sec. 3 thereof will, if such agreement competitors of Hazel-Atlas and to the public interest, and is eventually cancelled, cause irreparable injury to the the deposit of such monies with the Clerk of this Court will insure a sufficient fund for the dissolution of Hartford and

the establishment of competing concerns if that ultimately becomes necessary.

4. Because the inconvenience to Hazel-Atlas and Hartford through issuance of the Impounding Order will be inconsiderable as compared to the injury to the public if the order is not issued, justice requires that the Court exercise its discretion by issuance of the order at the present time.

Frank L. Kloeb, U. S. District Judge.

[fol. 712] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

INTERLOCUTORY ORDER IMPOUNDING FUNDS—
Filed May 9, 1941

The above action having come on to be heard on April 10, 1941, upon the plaintiff's motion for an order impounding funds payable by defendant Hazel-Atlas Glass Company to defendant Hartford-Empire Company, and by defendant Hartford-Empire Company to defendant Hazel-Atlas Glass Company, under the terms of a General License Agreement executed between said defendants under date of July 1, 1932, the plaintiff and both of said defendants having submitted written briefs supported by affidavits, the plaintiff having submitted requests for findings of fact and conclusions of law, counsel for the plaintiff and both of said defendants having been heard in oral argument, the Court, upon consideration thereof, makes the findings of fact and conclusions of law filed herewith.

It is therefore ordered that:

1. Said motion be and the same hereby is granted in all respects.

[fol. 713] 2. The defendant Hazel-Atlas Glass Company, its officers and directors, be and they hereby are directed, pending the expiration of the time for appeal from the final judgment of this Court in this action or, if an appeal be taken from such final judgment, then pending the final determination of this action on such appeal, to deposit with the Clerk of this Court, pursuant to Rev. Stat., Secs. 995

and 996 (28 U. S. C. A., Secs. 851, 852) and subject to the further order of this Court or of any court where this action may be pending on appeal, royalties on all merchantable glassware manufactured by defendant Hazel-Atlas Glass Company during the life of said General License Agreement by the use of any licensed invention as defined in said Agreement at the defendant Hartford-Empire Company's lowest rates, as defined in Sec. 3 of said Agreement, copy whereof is attached to this Order as Exhibit A and made a part hereof. Any such royalties heretofore accrued but unpaid shall be deposited forthwith with the Clerk of this Court, and all further deposits hereunder shall be made monthly on or before the 15th day of each month, for and upon all merchantable glassware manufactured by defendant Hazel-Atlas Glass Company under said General License Agreement during the preceding calendar month.

3. The defendant Hartford-Empire Company, its officers and directors, be and they hereby are directed, pending the expiration of the time for appeal from final judgment of this Court, or if an appeal be taken from such final judgment, then pending the final determination of this action on such appeal, to deposit with the Clerk of this Court, pursuant to Rev. Stat., Secs. 995 and 996 (28 U. S. C. A., Secs. 851, 852), and subject to the further order of this Court or [fol. 714] of any court where this action may be pending on appeal, one-third (1/3) of the excess over $850,000.00 of the defendant Hartford-Empire Company's yearly income until January 3, 1945, from licensed inventions, as defined in Sec. 6 (d) of said General License Agreement. All deposits hereunder shall be made on or before May 1st, August 1st, November 1st and February 1st of each year, on the net income for the preceding quarterly period as determined under the provisions of Sec. 6 of said General License Agreement which is hereto attached as Exhibit B and made a part of this Order, except that the deposit due on May 1, 1941, may be made on or before May 15, 1941.

4. The reasons for the issuance of this injunction are the following:

(a) The findings of fact and conclusions of law filed herewith.

(b) The grave danger that the substantial payments being made under said General License Agreement of July 1,

1932, may be dissipated or distributed by said defendants pending final outcome of this action, thereby rendering impossible, for want of adequate capital, a divestiture and rearrangement of the patents and other property of defendant Hartford-Empire Company as prayed for in the complaint.

(e) The Court has jurisdiction under Section 4 of the Sherman Antitrust Act (26 Stat. 209, 15 U. S. C. A., Sec. 4) to make an order impounding such payment and deems the making of such an order to be just in the premises.

By the Court (s.) Frank L. Kloeb.

May 9, 1941.

[fol. 715] EXHIBIT "A" TO ORDER IMPOUNDING FUNDS

Section 3. Royalties Payable by Hazel-Atlas. Hazel-Atlas agrees to pay to Hartford royalties on all merchantable glassware manufactured by Hazel-Atlas, during the life of this Agreement, by the use of any Licensed Invention, at Hartford's Lowest Rates as defined below in this Section 3.

A. *Feeders.* Schedule C attached hereto is a schedule of Hartford's Lowest Rates applying to Feeders now operated by Hazel-Atlas. Hartford shall promptly notify Hazel-Atlas of any change therein.

In the event that Hazel-Atlas shall use, in lieu of Licensed Inventions relating to Feeders, any apparatus or method (other than apparatus for or methods of drawing glass by suction into molds), not embodying any such Licensed Invention, Hazel-Atlas shall pay no royalties upon glassware so produced; but if, in any calendar year, such production of glassware by Hazel-Atlas shall exceed one-fifth (⅕) of the total glassware produced during that year by Hazel-Atlas (other than with apparatus for or methods of drawing glass by suction into molds) then the payment by Hartford to Hazel-Atlas for that year under this Agreement shall be reduced by an amount equal to two-thirds (⅔) of the royalties which would have been payable (at the rates provided by Schedule C and any modifications thereof) on such excess production if such excess produc-

tion had been manufactured by the use of Licensed Inventions relating to Feeders.

B. *Formers.*

For the purposes of this Agreement, Formers are of different types when they have features or methods of opera-
[fol. 716] tion differentiating them from other Formers. Such differences are illustrated by the differences among the Formers known in the glass industry as Lynch 10, Lynch LA, Miller MA, O'Neill No Boy, Owens AW, Owens AY, Hartford IS, Hartford Narrow Neck, Hartford 12, Miller Press, and Hartford Milk Bottle Machine.

(a) As to the individual Formers of any particular type, except as provided in paragraphs (c), (d) and (e) hereof, acquired by Hazel-Atlas *prior* to July 1, 1932, no royalties shall be payable by Hazel-Atlas until such time as Hartford is receiving from one or more of its Feeder licensees, other than Owens-Illinois Glass Company, royalties upon one or more Formers, of the same type, acquired by such licensee or licensees *prior* to July 1, 1932, in which event Hazel-Atlas shall, from such time, pay royalties for its use thereafter of a number of Formers equal to the number (but not to exceed the number so used by it), of the same type, so acquired, as to which Hartford is thus, from time to time, receiving royalties.

(b) As to the individual Formers of any particular type, except as provided in paragraphs (c), (d) and (e) hereof, acquired by Hazel-Atlas *subsequent* to July 1, 1932, no royalties shall be payable by Hazel-Atlas until such time as Hartford is receiving from one or more of its Feeder licensees, other than Owens-Illinois Glass Company, royalties upon one or more Formers, of the same type, acquired by such licensee or licensees *subsequent* to July 1, 1932, in which event Hazel-Atlas shall from such time pay royalties for its use thereafter of a number of Formers equal to the number (but not to exceed the number so used by it), of
[fol. 717] the same type, so acquired, as to which Hartford is thus, from time to time, receiving royalties.

(c) As to Formers of any particular type used by both Hazel-Atlas and Owens-Illinois Glass Company but by no other Feeder licensee of Hartford, no royalties shall be payable by Hazel-Atlas until such time as Hartford is re-

ceiving royalties upon one or more Formers, of the same type, from Owens-Illinois Glass Company, in which event Hazel-Atlas shall from such time pay royalties for its use thereafter of a number of Formers equal to the number (but not to exceed the number so used by it), of the same type, as to which Hartford is thus, from time to time, receiving royalties.

(d) As to Formers hereafter acquired by Hazel-Atlas otherwise than from Hartford and covered by any patent of Hartford relating to Licensed Inventions, but of a type not used by Owens-Illinois Glass Company or by any other licensee of Hartford, the question of whether or not royalty shall be payable by Hazel-Atlas, and the amount of royalty, if any, shall be determined by agreement, or in default thereof, by arbitration. In the event of such arbitration, no royalty shall be payable unless the arbitration decides that Hartford has made a substantial contribution, which is utilized in said Hazel-Atlas Formers.

(e) As to Formers acquired by Hazel-Atlas from Hartford, royalties shall be payable from the date of acquisition.

In case of any disagreement between the parties hereto regarding the foregoing provisions of (a), (b), (c) or (e) [fol. 718] as to Formers, or as to whether the use of any particular method or apparatus by Hazel-Atlas does or does not constitute a use of Licensed Inventions, the matter shall be settled by arbitration.

C. *Hartford's Lowest Rates.* This shall mean the lowest rates of royalty for any given ware (whatever form such royalty may take) which shall at the given time be charged by Hartford to any licensee in the United States for the production of the same class of ware by the same type of machine and/or process. If Hartford has no licensee for a given class of ware by a given type of machine and/or process and if Hazel-Atlas and Hartford are unable to agree upon such rates, the same shall be determined by arbitration with due consideration of the lowest rates under similar conditions charged others by Hartford for the manufacture of similar, but not necessarily identical, ware by the same machine and/or process, or the identical ware by other, but not identical, machine and/or process and the relative efficiency thereof.

D. All royalties shall be paid monthly, at Hartford's office, in New York funds, on or before the fifteenth (15th) day of each month, for and upon all merchantable glassware manufactured by Hazel-Atlas under this Agreement during the preceding calendar month.

[fol. 719] EXHIBIT "B" TO ORDER IMPOUNDING FUNDS

Section 6. Payments by Hartford. In consideration of said releases and licenses granted by Hazel-Atlas to Hartford, and of Hazel-Atlas hereby agreeing to furnish Hartford the advantage and benefit, with respect to Licensed Inventions, of the knowledge and experience of Hazel-Atlas' engineers and technically trained employees, obtained in practical commercial use of glassworking mechanisms and methods, at the cost to Hazel-Atlas of furnishing such advantage and benefit, and provided that such furnishing does not interfere substantially with Hazel-Atlas' production, Hartford agrees to pay to Hazel-Atlas one-third (⅓) of the Net Income of Hartford earned between the date hereof and the 3rd of January, 1945, and collected, and also one-half (½) of any amount by which Hartford's payments to Owens-Illinois Glass Company (under the third paragraph of Section 3 of the General License Agreement between Hartford and Owens-Illinois Glass Company, dated July 1, 1932) are reduced.

(a) In order to make the fiscal year under this Agreement correspond to the calendar year, the following method will be followed:

(b) For each quarterly period ending March 31st, June 30th and September 30th in each calendar year, the Net Income of Hartford shall be computed by deducting Two Hundred Twelve Thousand Five Hundred Dollars ($212,500.) from Hartford's Income from Licensed Inventions for said quarterly period and then Hartford shall on that basis make payment on account.

[fol. 720] (c) At the end of each calendar year, the Net Income of Hartford shall be re-computed for the year, (but only for the last half year in the case of the year 1932), making due allowance for any payments on account made by Hartford. Payments shall be made by Hartford on or

before May 1st, August 1st, November 1st and February 1st of each year on the Net Income for the preceding quarterly period.

(d) Hartford's Income from Licensed Inventions. This phrase shall be held to include and be limited to the total collected income of Hartford derived from (a) royalties, (b) net difference between license fees and cost of manufacturing of licensed machines, (c) profits on manufacturing, lease, or sale of machines or parts, (d) settlements for damages and profits arising out of infringements of Licensed Inventions which infringements shall have occurred subsequent to the date hereof, and (e) other revenues from the disposal of rights in Licensed Inventions; all of the aforesaid items being restricted to income arising from Licensed Inventions; *provided, however*, that there shall first be deducted from said total collected income for any year, all sums which Hartford may by judicial decree be compelled to pay during such year for settlements of damages or profits arising out of infringements by Hartford of the patents of others, or which Hartford may by judicial decree be compelled to pay by reason of any assumption or guarantee by Hartford of such damages or profits recovered from its licensees, all arising from the manufacture, use or sale of mechanisms and/or methods embodying Licensed Inventions, provided that any such [fol. 721] deduction because of such assumption or guarantee, on any given mechanism, shall not exceed the equivalent of two years' royalties thereon.

(e) Net Income of Hartford. The net income of Hartford shall be calculated as follows:

From Hartford's yearly Income from Licensed Inventions there shall be deducted yearly the sum of Eight Hundred and Fifty Thousand Dollars ($850,000), which sum shall be retained by Hartford for its own use. The annual excess or remainder over and above such deduction shall constitute and be held to be the Net Income of Hartford.

(f) License Fees and Royalties. "License Fee" shall be held to mean any initial payment, in installments or otherwise, made upon the leasing or licensing of any mechanism embodying any Licensed Invention. "Royalty" shall be held to mean any recurring periodical payment

made in consideration of the right to use such a mechanism or process.

[fol. 722] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION OF LYNCH CORPORATION, THOMAS CHANDLER WERBE, E. G. BRIDGES, A. G. DOLL, J. L. WATTS, UZ MCMURTRIE, AND N. M. MCCULLOUGH FOR DISMISSAL—Filed October 22, 1941

Without waiving their right to offer evidence in the event this motion be not granted, defendants Lynch Corporation, Thomas Chandler Werbe, E. G. Bridges, A. G. Doll, J. L. Watts, Uz McMurtrie, and N. M. McCullough, and each of them separately move for a dismissal upon the ground that upon the facts and the law the plaintiff has shown no right to relief against these moving defendants.

Pence, O'Neill & Diven, Doyle & Lewis, Attorneys for Defendants, Lynch Corporation, Thomas Chandler Werbe, E. G. Bridges, A. G. Doll, J. L. Watts, Uz McMurtrie, and N. M. McCullough.

Of Counsel: Albert Diven, Anderson Bank Building, Anderson, Indiana. Lehr Fess, 1631 Nicholas Building, Toledo, Ohio.

[fol. 723] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR DISMISSAL BY ANCHOR HOCKING GLASS CORPORATION—Filed October 22, 1941

Now come the defendants, Anchor Hocking Glass Corporation, Isaac J. Collins, J. D. Dilworth, W. V. Fisher, T. C. Fulton, Herman Krannert, V. E. Macy, Jr., J. H. Moffett, Ernest Stauffen, Jr., L. B. Williams, J. O. Deegan, B. E. Factor, C. D. King, H. J. Carr, H. C. Laughlin, H. J. Ham-

lin and F. B. Schlub, and each of them, the plaintiff having completed the presentation of its evidence as to said defendants, and jointly and severally move the court upon all the papers, pleadings, evidence and proceedings in the above entitled cause, for a judgment in favor of the above named defendants, and each of them, dismissing the complaint against them and each of them, as prayed for in their answer herein, and in accordance with the provisions of Rule 41 of the Federal Rules of Civil Procedure, upon the ground that upon the facts and the law the plaintiff has shown no right to relief as against these moving defendants, or any of them, and has not shown that these moving defendants or any of them have violated or are now violating Sections 1 and 2 of the Sherman Act or Section 3 of the Clayton Act, as alleged in the complaint, or now are or [fol. 724] ever have been a party to any alleged conspiracy, combination or monopoly in restraint of trade or commerce, and said moving defendants and each of them are entitled to such judgment as a matter of law.

Wherefore, said defendants and each of them pray that the complaint be dismissed as to each and all of them.

Hugh C. Laughlin, Welles, Kelsey, Coburn & Laughlin, Attorneys for Moving Defendants. Geo. D. Welles, Wm. S. Mullen, Fred A. Smith, Of Counsel.

[fol. 725] [File endorsement omitted]

[Title omitted]

IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANTS GLASS CONTAINER ASSOCIATION OF AMERICA, INC., CHARLES R. STEVENSON AND EMORY G. ACKERMAN FOR DISMISSAL AT CONCLUSION OF EVIDENCE OFFERED BY PLAINTIFF—Filed October 22, 1941

Now come the defendants Glass Container Association of America, Inc., Charles R. Stevenson and Emory G. Ackerman, and each of them the plaintiff having completed the presentation of its evidence as to said defendants, and jointly and severally move the Court upon all the papers, pleadings, evidence and proceedings in the above entitled cause, for a judgment in favor of the above named defend-

ants, and each of them, dismissing the complaint against them and each of them, as prayed for in their answer herein, and in accordance with the provisions of Rule 41 of the Federal Rules of Civil Procedure, upon the ground that upon the facts and the law the plaintiff has shown no right to relief as against these moving defendants, or any of them, and has not shown that these moving defendants or any of them have violated or are now violating Sections 1 and 2 of the Sherman Act or Section 3 of the Clayton Act, as alleged in the complaint, or now are or ever have been a [fols. 726-727] party to any alleged conspiracy, combination or monopoly in restraint of trade or commerce, and said moving defendants and each of them are entitled to such judgment as a matter of law.

Wherefore, said defendants and each of them pray that the complaint be dismissed as to each and all of them.

(s.) Jones, Day, Cockley and Reavis, Attorneys for Defendants Glass Container Association of America, Inc., Charles R. Stevenson and Emory G. Ackerman. (s.) Luther Day, (s.) H. C. Rose, (s) Rufus S. Day, Of Counsel.

[fol. 728] [File endorsement omitted]

[Title omitted]

IN UNITED STATES DISTRICT COURT

MOTION FOR DISMISSAL BY THATCHER MFG. CO., ET AL.—Filed October 27, 1941

After the plaintiff, the United States of America, has completed the presentation of its evidence, the defendants Thatcher Manufacturing Company, H. C. Mandeville, R. W. Niver, E. F. Wellinghoff, C. G. Decker, F. H. Mills, S. G. H. Turner, Jervis Langdon, W. H. Mandeville, F. W. Swan and Stanton Griffis, reserving to each of them the right to offer evidence if this motion is not granted, severally now move the court for dismissal of this action, as to said defendants and each of them, on the ground that upon the facts and the law the plaintiff has shown no right to relief against said defendants or any of them.

(Signed) Ralph Emery, Attorney for said Defendants, 1018 Nicholas Building, Toledo, Ohio.

[fol. 729] [File endorsement omitted]

[Title omitted]

IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANTS CORNING GLASS WORKS, EMPIRE MACHINE COMPANY AND CERTAIN INDIVIDUAL DEFENDANTS FOR A DISMISSAL OF PLAINTIFF'S COMPLAINT—Filed October 27, 1941

To the Honorable United States District Court for the Northern District of Ohio, Western Division:

Now come the defendants Corning Glass Works, Empire Machine Company, Alexander D. Falck, Amory Houghton, Arthur A. Houghton, Jr., Alanson B. Houghton, Eugene C. Sullivan, William H. Curtiss, George D. Macbeth, Glen W. Cole, P. W. Jenkins, J. L. Peden, W. C. Decker, George B. Hollister and Arthur L. Day, and each severally move this Court for a nonsuit and a dismissal of plaintiff's complaint against it or him respectively on the grounds that the plaintiff has failed to prove facts sufficient to constitute a cause of action and that if any cause of action ever existed against it or him the basis of said cause of action has been removed and the questions involved have become moot.

Dated at Toledo, Ohio, this 27th day of October, 1941.

McMahon, Webber & Hayward, Attorneys for Defendants, Nicholas Building, Toledo, Ohio. By (Signed) Franklin F. Hayward.

[fol. 730] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OVERRULING MOTION OF LYNCH CORPORATION, ET AL.—Filed February 26, 1942

This day came the parties by their attorneys and the Court, having heard arguments of counsel on the motions of the Anchor Hocking Glass Corporation, et al., and Lynch Corporation, et al., overrules the motion of Lynch Corporation and the associated individual defendants therein named, to which ruling the said defendants, by counsel, except.

FLK.

[fol. 731] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OVERRULING MOTION OF GLASS CONTAINER ASSOCIATION, ET AL., AND SUSTAINING MOTION OF LIBERTY GLASS CO., ETC.—Filed February 27, 1942

This day again came the parties by their attorneys and the Court, having heard the arguments of counsel on the motions of the Glass Container Association, et al., and Liberty Glass Company, et al., overrules the motion of the Glass Container Association and the associated individual defendants therein named, to which ruling the said defendants, by counsel, except.

The motions of Liberty Glass Company and associated defendants and Anchor Hocking Glass Corporation and associated defendants, except I. J. Collins, are sustained. Counsel for said I. J. Collins except as to the overruling of said motion as to him. Counsel for the prevailing defendants are to submit proposed Findings of Facts and Conclusions of Law within thirty days, with objections or suggested additions thereto to be presented by the Government thereafter.

Defendant G. F. Reiman, by counsel, moved the Court for dismissal and such motion, together with that of Thatcher Manufacturing Company and associated defendants, is submitted on briefs filed, or to be filed.

FLK.

[fol. 732] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PLAINTIFF'S MOTION FOR REHEARING OF MOTION OF DEFENDANT ANCHOR HOCKING GLASS CORPORATION AND RELATED DEFENDANTS TO DISMISS THE COMPLAINT—Filed May 15, 1942

Now comes the plaintiff in the above-entitled cause and says that subsequent to the hearing of the motion of the defendant Anchor Hocking Glass Corporation and related

defendants for dismissal of the Complaint, viz: On May 11th, 1942, the Supreme Court of the United States rendered a decision, in the case of *United States* v. *Masonite Corporation*, which clarifies the law as to what constitutes participation in an antitrust conspiracy, and, the plaintiff contends, requires a reversal by this Court of its ruling on the aforesaid motion.

Wherefore, the plaintiff now moves for a rehearing of said motion.

By Its Attorneys, Samuel S. Isseks, Special Assistant to the Attorney General, (s.) Lawrence S. Apsey, Special Assistant to the Attorney General; Victor H. Kramer, Seymour D. Lewis, Special Attorneys.

May 15, 1942.

[fols. 733-734] In United States District Court

[Title omitted]

Order Noting Dismissal as to Certain Defendants, etc.—June 26, 1942

This day again came the parties by their Attorneys, and the trial of this cause proceeded.

The motion of the Government to dismiss as to certain individual defendants is sustained and the Complaint is dismissed as to Arthur E. Ball, A. M. Bracken, Glen W. Cole, W. C. Decker, George B. Hollister, John C. Hostetter, P. W. Jenkins, S. O. Laughlin, George D. Macbeth, A. L. Metzner, F. H. Mills, F. T. Nesbitt, H. W. Sherwood, F. J. Solon, John L. Thomas and C. J. Wilcox.

The motion of the Government for rehearing, except as to I. J. Collins, on the motion of Anchor Hocking Glass Corporation and associated defendants to dismiss the Complaint is overruled as to all defendants, except J. D. Dillworth, W. B. Fisher, and T. C. Fulton, who are hereby retained as defendants herein. Parties affected by this ruling are, respectively, allowed exceptions.

The motions of the defendants G. F. Rieman and I. J. Collins to dismiss the Complaint are overruled, to which ruling of the Court G. F. Rieman and I. J. Collins are each allowed an exception.

The Court requests Counsel to submit proposed Findings of Fact and Conclusions of Law herein within fifteen (15) days from the conclusion of arguments herein.

Argument in chief on behalf of the Government was begun and concluded.

The hour of adjournment having arrived, further proceedings herein are continued to Monday morning, June 29, 1942, at 9:30 o'clock.

FLK.

[fols. 735-738] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OF DISMISSAL AS TO ANCHOR HOCKING GLASS CORPORATION ET AL., ETC.—Filed August 20, 1942

A motion for dismissal of the complaint herein, filed at the conclusion of the evidence adduced in chief on behalf of the Government, by the Anchor Hocking Glass Corporation and associated individual defendants, having been heard and duly considered now,

The Court finds that the evidence so presented in chief by the Government is insufficient to sustain the allegations of the complaint as to these moving defendants, except I. J. Collins, J. D. Dilworth, W. V. Fisher, and T. C. Fulton, and for that reason, the motion is sustained and

It is ordered that the Complaint be, and it hereby is, dismissed as to Anchor Hocking Glass Corporation, Herman Krannert, V. E. Macy, Jr., J. H. Moffett, Ernest Stauffen, Jr., L. B. Williams, J. C. Deegan, B. E. Factor, C. D. King, H. J. Carr, H. C. Laughlin, H. J. Hamlin, and F. B. Schlub.

Exceptions are allowed the Government and the defendants I. J. Collins, J. D. Dilworth, W. V. Fisher, and T. C. Fulton.

(S.) Frank L. Kloeb, United States District Judge.

August 20, 1942.

[fol. 739] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO STRIKE EVIDENCE—Filed October 22, 1941

Now come the defendants Anchor Hocking Glass Corporation, Isaac J. Collins, J. D. Dilworth, W. V. Fisher, T. C. Fulton, Herman Krannert, V. E. Macy, Jr., J. H. Moffett, Ernest Stauffen, Jr., L. B. Williams, J. O. Deegan, B. E. Factor, C. D. King, H. J. Carr, H. C. Laughlin, H. J. Hamlin, and F. B. Schlub, and each of them, and jointly and severally represent to the court:

1. All of the evidence, oral and documentary, was tendered and received in this cause subject to each defendant being connected into the alleged conspiracy and subject to a general objection by each of these defendants that all of such evidence was irrelevant, immaterial and incompetent for all purposes, including the purpose of connection.

2. A continuing objection was made in behalf of each and all of the foregoing defendants upon the record to all of the evidence to which this motion is directed.

3. Plaintiff has completed the presentation of its evidence and has rested.

[fol. 740] 4. These defendants and each of them jointly and severally move the court for an order limiting the use for which said evidence may be used herein to purposes other than for the purpose of connecting each or all of the foregoing defendants into the alleged conspiracies, combinations or monopolies set forth in the complaint, and striking said evidence from the record in so far as its use for the purpose of connecting each or all of the foregoing defendants into said alleged conspiracies, combinations and monopolies is concerned, upon the grounds that said evidence is irrelevant, incompetent and immaterial for said purposes, is beyond the scope of the pleadings, and is not set forth in said complaint as acts or transactions claimed to have connected any or all of the foregoing defendants into said alleged conspiracies, monopolies or combinations in restraint of trade, and upon the further grounds in so

far as the evidence set forth in specifications five (a), (b), (c), (d) and (e) of this motion is concerned, that as shown by the record all of said evidence relates to past acts, past activities, and past transactions of corporations long since dissolved, and the only alleged connection of the foregoing defendants with which rests upon the fact that a part of the assets of said dissolved corporations was eventually through mesne conveyances and corporations acquired by the defendant Anchor Hocking Glass Corporation, which in no wise assumed the liabilities of said corporations, and which as a matter of law is insufficient basis for connecting any of said defendants into said alleged conspiracies, combinations, or monopolies in restraint of trade.

[fol. 741] 5. This motion is made jointly and separately as to each defendant, and separately as to all of the evidence set forth in each of the following specifications, viz.:

(a) Any and all evidence, oral or written, relating to the acts, activities or transactions of Monongah Glass Company or its agents, representatives or employees.

(b) Any and all evidence, oral or written, relating to the acts, activities or transactions of Turner Glass Company or its agents, representatives or employees.

(c) Any and all evidence, oral or written, relating to the acts, activities or transactions of General Glass Company or its agents, representatives or employees.

(d) Any and all evidence, oral or written, relating to the acts, activities or transactions of Hocking Glass Company or its agents, representatives or employees (except those acts or activities relating to the acquisition by Anchor Cap Corporation of the assets of Hocking Glass Corporation).

(e) Any and all evidence, oral or written, relating to the acts, activities or transactions of Capstan Glass Company or its agents, representatives or employees.

(f) Any and all evidence, oral or written, relating to the acts or activities of Mr. I. J. Collins while a director of Hartford-Empire Company (1926-1937).

6. These defendants and each of them jointly and severally further move the court for an order striking the

[fol. 742] evidence aforesaid from the record, upon the grounds that said evidence is irrelevant, incompetent and immaterial, and is beyond the scope of the pleadings or any issues raised thereby.

(Signed) Hugh C. Laughlin. (Signed) Welles, Kelsey, Cobourn & Harrington, Attorneys for Moving Defendants.

Of Counsel: (Signed) George D. Welles, Fred E. Fuller, Fred A. Smith.

[fol. 743] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PLAINTIFF'S MEMORANDUM CONCERNING SCOPE OF EVIDENCE ADMISSIBLE IN SUPPORT OF DEFENDANTS' CASE—Filed November 3, 1941

In view of the extensive nature of the present suit, the public policy in favor of confining the evidence within the issues raised by the Complaint and Answers is even stronger than in many cases. The plaintiff has reason to believe that the plan of the defense involves a minute and technical examination of many of the inventions and machines developed or acquired by Hartford, and a comparative estimate of the mechanical details and merits of the many inventions which were litigated between the defendants and others in the Patent Office and before the [fol. 744] Courts during the course of the alleged conspiracy. Such an examination will necessarily involve a great deal of technical expert testimony and will import into this case the differences of opinion between inventors and other patent experts which comprise the substance of two and one-half decades of bitter patent litigation and the expenditure of literally millions of dollars. The Government believes that to embark upon such a course of inquiry in the instant suit would be a foolish and useless waste of the energies of this Court and of counsel and would involve an indefensible expenditure of public funds.

The defendants' plan may be based on the theory that the Government has questioned the validity of their patents

or has somehow placed in issue the technical nature of their machines. This, however, is not the case. The Government has complained only of *practices* and the uses that have been made of patents. From an antitrust viewpoint, the position of the Government would be the same if inventions or patents relative to the steel industry, the plastics industry, or the airplane industry, had been used in the same manner as the instant inventions and patents have been used in the glass industry. From an antitrust angle, therefore, the technical details of the inventions, the manner [fol. 745] of their development, their merits and demerits, are wholly immaterial. These details might be pertinent in a patent suit; but they have no place in an antitrust suit where it is only the *practices* of the defendants and the use of their inventions to restrain trade and create illegal monopolies which are in issue.

There will, of course, be instances when some general description of the nature or purpose of an invention may be necessary to clarify a specific issue of antitrust significance or to rebut some specific piece of evidence relied on by the plaintiff; but any attempt to describe the course of invention and the nature and relative merits of different inventions and patents, whether under the guise of "underlying history", or "general background", or "giving the Court the whole picture", or "an understanding of the operation of the inventions referred to in the plaintiff's case", should be firmly resisted.

In an endeavor to indicate in a general way the line of demarcation between relevant and irrelevant evidence in this respect, the Government is submitting to the Court in advance the following outline of its position:

I. *Evidence relative to inventions and machines.*

The Government will object to the introduction of any [fol. 746] evidence:

A. *To show the validity of patents.*

A memorandum of law containing the detailed arguments and authorities as to the irrelevancy of patent issues in the instant suit has been prepared and will be submitted to the Court, if desired, when the issue presents itself.

B. *Describing inventions and machines, how they were made or developed or how they operate.*

Exceptions: The Government would not object to:

(1) A description of the general classification of the machine, as whether a feeder or former, suction or gob feed.

(2) A description of the general principle of operation of a machine and the type of ware which it produces, if limited to the extent necessary to identify the machine and its use.

C. *Describing the differences or similarities between different inventions, machines or patents.*

Insofar as patent validity might be involved in such de-
[fol. 747] scription, the arguments and authorities are covered by the brief prepared by the plaintiff, referred to under point I-A above.

Exceptions: The same exceptions would apply to evidence in this category as to that covered under point I-B above.

D. *To show the history of the technical development of inventions or machines.*

Exception: Explanations of changes in the competitive situation brought about by certain inventions or machines.

E. *To show the merits, demerits or relative merits of inventions or machines.*

Exceptions: The same exceptions exist as under point I-D above.

II. *Hearsay evidence offered to show the state of mind of the writer or those whom he represents.*

As pointed out with citation of many authorities at p. 39, et seq. of plaintiff's brief referred to under point I-A above, the good motives which may have actuated the per-
[fol. 748] formance of acts constituting the means by which a general conspiracy is effectuated are irrelevant, although an intent to restrain trade or create a monopoly is admissible to show the meeting of the minds which is the essence of conspiracy or to show an attempt to monopolize. For these reasons, the Government submits that evidence offered by the defendants to show their good intentions generally or the good motives with which certain acts were performed is inadmissible; and that in order to render hearsay admissible to show the state of mind of the writer or those

whom he represents, the defendants must first establish that the evidence tends

(1) to show no meeting of the minds with co-conspirators, or

(2) to show that specific action alleged to constitute an attempt to monopolize was not such an attempt, or

(3) to rebut a specific piece of evidence introduced by the Government and *admitted for the purpose of showing a contrary intent.*

Respectfully submitted, Samuel S. Isseks, (Signed) Lawrence S. Apsey, Special Assistants to the Attorney General. Victor H. Kramer, Seymour D. Lewis, Special Attorneys.

October 27, 1941.

[fol. 749] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO ADMISSIBILITY OF EVIDENCE TO SHOW VALIDITY OF PATENTS—Filed November 3, 1941.

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[fol. 751] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION

Civil Action No. 4426

UNITED STATES OF AMERICA, Plaintiff,

v.

HARTFORD-EMPIRE COMPANY, ET AL., Defendant.

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO ADMISSIBILITY OF EVIDENCE TO SHOW VALIDITY OF PATENTS

Questions presented:

The defendants have offered evidence for the purpose of showing the validity of their patents. Patent suits are notoriously lengthy and expensive. They involve highly technical and complex issues and usually evoke volumes of testimony from highly paid technical experts. To import into the instant case not only *one*, but a *multitude* of patent suits would involve a wholly unwarranted expenditure of the time of the Court and the Government and of the public funds. It would becloud the real issues in this prolonged litigation with irrelevant and confusing collateral matters. [fol. 752] Hence, it is submitted that all such evidence should be rejected, in the absence of the clearest demonstration of its direct relevancy to the issues in this case. Far from being relevant, the Government submits that all such evidence is palpably immaterial and irrelevant for several reasons.

The defendants cannot justify (a) combinations in restraint of trade, (b) the pooling of patents, exchange of licenses, acquisition of competing patents or imposition of restrictive license provisions, as part of a general conspiracy in restraint of trade, or (c) united exercise, to restrain competition, of the lawful individual monopolies granted by the patent statutes, by showing that the defendants engaged in these practices in the assertion of valid patent rights. The validity of the patents has not been called in question by the Government, nor has it any probative value in establishing the state of mind of the defendant. Furthermore, the good intention which may have motivated the defendants in the use of their patents in

pursuing a larger plan to control interstate markets is irrelevant. Evidence to prove it is therefore inadmissible.

I. *No evidence is admissible to show the validity of the patents in justification of the practices with which the defendants have been charged.*

A. *Proof of such validity would be no legal justification of combinations in restraint of trade.*

In defining the scope of the Sherman Act in *American Biscuit & Mfg. Co.* v. *Klotz*, 44 Fed. 721 (C. C. E. D. La., 1891), the Court said at p. 725:

[fol. 753] Now it is to be observed that these statutes outline an offense, but require for its complete commission no ulterior motive, such as to defraud, etc.; and, further, that the language is altogether silent as to what means must be used to constitute the offense. The offense is defined to "combine in the form of trust, or otherwise, in restraint of trade or commerce," and "to monopolize, or attempt to monopolize any of the trade or commerce." To compass either of these things, with no other motive than to compass them, and by any means, constitutes the offense.

Hence, if the defendants have entered into combinations in restraint of interstate trade or have monopolized or attempted to monopolize any part of it, they have violated the statute; and the fact that suits or contracts asserting valid patent rights were the means employed for entering into such combinations, monopolies, or attempts to monopolize will not justify their acts.

In fact, it has been directly held in this Circuit, in the case of *Patterson* v. *United States*, 222 Fed. 599 (C. C. A. 6, 1915) cert. den. 238 U. S. 635, which is binding authority on this Court, that a defendant is not entitled to prove, in justification of an alleged violation of the antitrust laws, that the trade and commerce of such defendant is covered by valid patents. Judge Cochran said, in delivering the opinion in that case, at pp. 645-647:

This brings us to the assignments questioning rulings excluding evidence offered by the defendants. That mainly complained of is the rejection of evidence offered to prove that the National owned unexpired patents covering the [fol. 754] machines made and sold or offered to be sold, by the 16 competitors whom it bought out, * * * assuming

that the offer was made in good faith, we think the court was right in excluding the evidence * * * [page 646]. The patentee, therefore, has the right to have others refrain from selling the article covered by his patent, and if they will not do so he has the right to prevent them from selling by suit. Has a patentee, then, the right to prevent any infringer from selling the article covered by his patent in any other way? He certainly has no right to do it by killing him, or destroying his factory, or such infringing articles as he may own. * * * But has he the right to prevent him from so doing by action outside of the courts, not involving an invasion of the rights of person or property of the infringer; i. e., by the use of means which would be wrongful if used by him to prevent another from selling articles not covered by his patent—i. e., such means as are charged here. * * * The question in hand is whether he and another, or his officers and agents in his interest, may conspire to prevent an invasion of his rights in the interstate field by the use of any such means. This depends solely on whether such a conspiracy is within the first section of the Antitrust Act. And it would seem that to ask this question is to answer it. * * * The intent of the statute was to sweep away all conspiracies in restraint of such trade or commerce, whatever their character may be. The statute respects the monopoly of the patentee. It to no extent invades the rights conferred upon him by his patent. *Bement* v. *National Harrow Co.*, 186 U. S. 70, 22 Sup. Ct. 747, 46 L. Ed. 1058; *United States* v. *Winslow*, 227 U. S. 202, 33 Sup. Ct. 253, 57 L. Ed. 481. But the right to conspire with [p. 647] another or others in his interest in restraint of the interstate trade or commerce covered by his patent is not one of the rights conferred thereby, and such a conspiracy is within the statute. *Standard Sanitary Mfg. Co.* v. *United States*, 226 U. S. 20, Sup. Ct. 9, 57 L. Ed. 107. Mr. Justice McKenna there said:

"Rights conferred by patents are indeed very definite and extensive, but they do not give any more than other rights a universal license against positive prohibitions. The Sherman Law is a limitation of rights—rights which may be pushed to evil consequences, and therefore restrained."

[fol. 755] We are therefore clearly of the opinion that the defendants were not entitled to offer evidence that the trade and commerce of the American of Columbus in cash reg-

isters was covered by an unexpired patent owned by the National.

In *United States* v. *New Departure Mfg. Co.*, 204 Fed. 107 (W. D. N. Y. 1913), in which Mr. John Lord O'Brian represented the United States, the defendants demurred to the indictment on the ground of their patent rights; but Judge Hazel, in overruling the demurrer, thus aptly reviewed the authorities at pp. 113-114:

In the Bath-Tub Trust Case, 226 U. S. 20, 33 Sup. Ct. 9, 57 L. Ed. —, so-called, a case recently decided by the Supreme Court of the United States, a situation somewhat similar to this in respect to quantity of output and license agreement was presented, and the court said:

"The trade was, therefore, practically controlled from producer to consumer, and the potency of the scheme was established by the co-operation of 85 per cent of the manufacturers. * * * The agreements therefore clearly transcended what was necessary to protect the use of the patent or the monopoly which the law conferred upon it. They passed to the purpose and accomplished a restraint of trade condemned by the Sherman law."

The Supreme Court then pointed out the distinction between that case and the case of Bement v. National Harrow Co., 186 U. S. 70, 22 Sup. Ct. 747, 46 L. Ed. 1058; but nevertheless the intimation in the opinion is clear that the monopoly secured to the patentee by the issuance of a patent cannot be designedly used to form a combination or conspiracy between manufacturers and dealers to accomplish a restraint of trade such as the Anti-Trust Act prohibits. Upon this subject the Circuit Court of Appeals for the Third Circuit, in National Harrow Co. v. Hench, et al., 83 Fed. 36, 27 C. C. A. 349, 39 L. R. A. 299, has aptly said:

"The fact that the property involved is covered by letters patent is urged as a justification; but we do not see [fol. 756] how any importance can be attributed to this fact. Patents confer a monopoly as respects the property covered by them, but they confer no right upon the owners of several distinct patents to combine for the purpose of restraining competition and trade. Patented property does not differ in this respect from any other. The fact that only the patentee may possess himself of several patents, and

thus increase his monopoly, affords no support for an argument in favor of a combination by several distinct owners of such property to restrain manufacture, control, sales, and enhance prices. Such combinations are conspiracies against the public interests, and abuses of patent privileges."

The language quoted was cited with approval by Judge Coxe in National Harrow Company v. Hench, et al. (C. C.) 84 Fed. 226.

In Blount Manufacturing Co. v. Yale & Towne Mfg. Co. (C. C.), 166 Fed. 557, of the patentees' privilege of combining their patent rights, the court said:

"Where, however, each patentee continues to make his own goods under his own patents, and seeks to enhance his profits by agreement with creditors who make either patented or unpatented articles, then it seems to follow that the agreement of each to restrain his own trade cannot be regarded merely as an incident to the assignment of patent rights. The patentee then restrains his own trade, not for the purpose of enhancing the value of the license which he grants, but for the purpose of enhancing the value of his trade by removing competition."

So here, as claimed by the government, the license agreements were resorted to as a subterfuge to aid in stifling competition in trade and commerce, and to enhance the value of the respective businesses of the defendant, and to create a monopoly in their productions. In Sanitary Manufacturing Co. v. United States (the Bath-Tub Trust Case) the Supreme Court clearly supports the view that patentees' rights are limited by the Anti-Trust Act.

quoting the same passage from that opinion quoted *supra* [fol. 757] by Judge Cochran in *Patterson* v. *United States*. At p. 115 of his opinion in the *New Departure* case, Judge Hazel finally reached the following conclusion, which is directly applicable to the facts which the Government seeks to prove in the case at bar:

Indeed, by the methods and acts complained of, the commingling of separate interests in separate patent rights, by the issuing of a pretended license for a pretended basic patent, with the intention of fixing uniform prices and discounts and imposing other conditions, benefits and ad-

vantages were secured which may be enjoyed only by a separate patentee in the protection of his true monopoly. It was such courses of procedure by industrial interests in whatever form or guise that the Anti-Trust Act was designed to check and prevent.

In *Blount Mfg. Co.* v. *Yale & Towne Mfg. Co., supra,* Judge Brown further said at p. 562:

Combinations between owners of independent patents, whereby, as a part of a plan to monopolize the commercial field, competition is eliminated, are within the Sherman Act, for the reason that the restraint of trade or monopoly arises from combination, and not from the exercise of rights granted by letters patent. Again, in *Interstate Circuit, Inc. v. United States,* 306 U. S. 208, 230 (1939), Mr. Justice Stone said:

A contract between a copyright owner and one who has no copyright, restraining the competitive distribution of the copyrighted articles in the open market in order to protect the latter from the competition, can no more be valid than a like agreement between two copyright owners or patentees * * *. In either case if the contract is effective, as it was here, competition is suppressed and the possibility of its resumption precluded by force of the contract. An agreement illegal because it suppresses competition is not any less so because the competitive article is copyrighted.

[fol. 758] In *National Harrow Co.* v. *Hench, supra,* Judge Butler further said at p. 38:

Patentees may compose their difficulties, as the owners of other property may, but they cannot make the occasion an excuse or cloak for the creation of monopolies to the public disadvantage.

In complete harmony with the above is the following language from Judge Dickinson's opinion in *United States* v. *Motion Picture Patents Co.,* 225 Fed. 800 (E. D. Pa. 1915) at pp. 806-807:

Where, however, by what was agreed to be done, the end indicated, in the sense of the result to be expected, was a monopolistic control of what was not the exclusive property of any one, or such a monopoly was the direct result

of undue and unreasonable restraints of trade, to be employed as the means of carrying out what was to be done, the fact that any one or more of the persons concerned owned patents would not prevent a finding of conspiracy.

Judge Dickinson further said at p. 810 of that case:

However this may be, the distinction sought to be pointed out is that while the owner of a patent on a plow, covering the handles or beam, might acquire or join with the owners of patents covering the moldboard, or share, or other parts of the plow, for the protection of the patented rights of all, and thereby incidentally secure an enlarged part of the trade in plows, the judgment would refuse to sanction a combination between the owners of patented plows, patented harrows, patented reapers and binders, and other implements of husbandry, and large dealers in these implements, who were not owners of patents, for the purpose of monopolizing the whole trade in the products of agriculture, if the direct end first proposed was to unduly and unreasonably restrain trade, as a means to the final purpose of monopolizing. The ownership of the patents, in such a case, surely could not be accepted as a defense to the charge of unlawful combination.

[fol. 759] The Government in the case at bar relies upon numerous conspiracies in restraint of interstate trade which, under the *Patterson* case, are within the statute, even though such trade be covered by valid patents of the defendants. The Government takes the position that the monopolies secured to the defendants by their patents have been designedly used to form a combination or conspiracy * * * to accomplish a restraint of trade such as the Anti-Trust Act prohibits.

Such action was held illegal by Judge Hazel in the *New Departure* case, *supra*.

The Government has alleged combinations by "several distinct owners of" patents "to restrain manufacture, control sales and enhance prices." Such combinations were said not to be justified by the patents in *Harrow Co.* v. *Hench*, quoted above in the *New Departure* case. The Government is relying upon combinations between owners of independent patents whereby, as a part of a plan to monopolize the commercial field, competition is eliminated. Such combinations were held to be within the Sherman

Act in the *Blount* case, *supra*. In the instant case they have been shown to have occurred between Hartford-Fairmont and Empire Machine in 1916, between Hartford-Empire, Corning and Empire Machine in 1922, between Hartford and Owens in 1924, between Hartford, Hazel-Atlas and [fol. 760] Owens in 1932, between Hartford, Owens and Lynch in 1933, between Hartford, Owens, Thatcher and Liberty with respect to milk bottles, between Hartford, Owens, Hazel-Atlas and Ball Bros. in 1933, and in many other instances,—all of which constitute part of the major conspiracy to restrain trade by the use of patents.

Hence it follows, to quote the words of the Circuit Court of Appeals for this Circuit in the *Patterson* case, that * * * the defendants were not entitled to offer evidence that the trade and commerce of the [defendants] * * * was covered by * * * their patents.

B. *Proof of the validity of the patents would be no legal justification of the pooling of patents, exchange of licenses, acquisition of competing patents or imposition of restrictive license provisions, as part of a general conspiracy in restraint of trade.*

1. *Pooling of patents and exchange of licenses.*

Judge Haney, in delivering the opinion of the Court in *Lynch* v. *Magnavox Co.*, 94 Fed. 883 (C. C. A. 9, 1938), laid down the law and reviewed the authorities applicable to the contention that the owner of valid patents may pool those patents, execute cross-license agreements and threaten and bring infringement suits with impunity. He said at pp. 889-890:

[fol. 761] We may assume that each of those acts would be lawful, and still a conspiracy might be shown. If the agreement has an unlawful purpose, it is a conspiracy, notwithstanding that the means used to carry it out were lawful. Thus in Swift & Co. v. United States, 196 U. S. 375, 396, 25 S. Ct. 276, 279, 49 L. Ed. 518, it is said: "It is suggested that the several acts charged are lawful, and that intent can make no difference. But they are bound together as the parts of a single plan. The plan may make the parts unlawful. * * *

In United States v. Reading Co., 226 U. S. 324, 357, 33 S. Ct. 90, 98, 57 L. Ed. 243, it is said: "It is not essential that these contracts, considered singly, be unlawful as in

restraint of trade. * * * Even acts absolutely lawful may be steps in a criminal plot. * * * But a series of such contracts, if the result of a concerted plan or plot between the defendants to thereby secure control of the sale of the independent coal in the markets of other states, and thereby suppress competition in prices between their own output and that of the independent operators, would come plainly within the terms of the statute, and, as parts of the scheme or plot, would be unlawful."

* * * * * * *

Therefore, here, it is insufficient to contend that there is no violation of the act because the means agreed upon were lawful. If the purpose was unlawful there is a violation.

As a corollary to the first line of argument, it is also contended that the actual use of the various means related was lawful. The argument is pertinent only if there was no unlawful purpose. Appellees rely strongly on Standard Oil Co. v. United States, 283 U. S. 163, 51 S. Ct. 421, 75 L. Ed. 926. There a patent pool and cross-licensing agreement was executed. There was no conspiracy to monopolize, other than that which might arise from the agreement itself. That agreement had neither an express or implied purpose to monopolize all the gasoline manufactured, was not used to that end, and there were no acts from which the unlawful purpose could be inferred. It was there said, [fol. 762] that "any agreement between competitors may be illegal if part of a larger plan to control interstate markets," and that the "limited monopolies granted to patent owners do not exempt them from the prohibitions of the Sherman Act and supplementary legislation." Page 169 of 283 U. S., 51 S. Ct. 421, 423, 75 L. Ed. 926. It was also said at page 175 of 283 U. S., 51 S. Ct. 421, 425, 75 L. Ed. 926: "But an agreement for cross-licensing and division of royalties violates the Act only when used to effect a monopoly, or to fix prices, or to impose otherwise an unreasonable restraint upon interstate commerce."

The Government in the instant case has alleged and, it is submitted, has shown, that the purpose of the defendants' plans was to effect a monopoly and to impose otherwise unreasonable restraints, and that the defendants have, therefore, violated the act as construed in *Lynch* v. *Magnavox Co.*, regardless of the validity of the patents employed in the pooling and cross-licensing agreements or

relied upon in the infringement suits that were threatened or brought.

The purpose of the plans of the defendants Hartford and Empire Machine to this effect were formulated at least as far back as June 30, 1916, when the first cross-licensing agreement between these two companies (Government Exhibit 1) was executed. It is evidenced a few years later by the following statement by Mr. F. Goodwin Smith in his report of a conference at South Dartmouth on August 2-4, 1919 (Government Exhibit 7), which was submitted to the [fol. 763] Board of Directors of Hartford-Fairmont (Tr. 62):

I also feel that it will be a very disturbing factor to have the Empire Machine Co. start out with a large capital and proceed to come into the field with a still separate line of automatic machinery.

This shows the purpose to eliminate competition which actuated the early combinations.

The effect on competition of the Hartford system as gradually built up through the years, as understood and admitted by Mr. Safford of that Company, is well expressed in the following quotation from Mr. Safford to Mr. Cole (Government Exhibit 1772*).

To Hartford's smaller licensees a breaking down of Hartford's licensing system meant freedom from royalties and ware restrictions, which they considered burdensome. To Hartford's larger licensees the amount of royalties paid meant less. Their chief worry was the unsettled industry which would inevitably result from a breaking down of Hartford's system of limited and restricted licenses. This system had offered very substantial protection in times past to certain restricted fields, and had prevented numerous manufacturers from competing on a par with Hartford's licensees.

The purpose of Corning in effectuating its combination with Hartford is demonstrated by the following excerpt from a letter of October 30, 1920, of Mr. V. M. Dorsey (who then represented Corning) to Mr. A. D. Falck (Government Exhibit 677):

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* The admissibility of this exhibit is still under advisement.

[fol. 764] I expressed an opinion that the whole bulb situation would be strengthened if a monopoly could be gotten into one hand, of the Flowing field, with right to take bulb lincenses from the owner of such monopoly, and that unless the Hartford-Fairmont Company succeeded in doing this, as they expected to do, there would be a purely competitive field which would seriously injure the monopoly in the cheapest way of producing bulbs.

The negotiations which eventually resulted in the combination between Hartford and Owens are replete with evidence that both parties purposed to remove all competition between their patents and to so pool the patents as to curb the activities of outsiders. Take, for example, the report in Government Exhibit 26 of the interview on January 10, 1922, between representatives of these parties:

4. Mr. Blair said that he would provide generally that there should be no conflict hereafter on patents whatsoever, and that the patents of each interest should be available for the other, referring in his remarks also to the new Owens development on bulbs.

* * * * * * *

26. Mr. Blair then explained the general principles at the bottom of this proposition. He felt it necessary that there should be in the glass industry some concern like Owens in a sufficiently strong position practically to force a stable price policy upon all important producers; that if Owens, by the plan as above suggested, had the free use of its own suction feed and the free use of the gob feed it could then go to any other producer who threatened to cut prices and unstabilize the market and inform him that such a policy was detrimental, but that if the outsider persisted in doing so Owens had a sufficient margin, by reason of its free use of both devices, so that if necessary it could come out on top in a price war and still make money. He felt that some such stabilizing influence was necessary and [fol. 765] that it could only be established through one company having such a peculiar strength as would be given in this case.

Again, take the following language from Government Exhibit 24, which was a report by Mr. F. Goodwin Smith

under date of January 24, 1922, concerning an Owens proposal:

I think it must be definitely assumed that the offer of Owens was based:

(a) To prevent patent and commercial war between the two methods of manufacture—Suction Machines vs. Gob Fed Machines.

(b) To stabilize the industry and strengthen patent assets for the purpose of eliminating outside feeders and machines.

* * * * * * *

As regards the increase of royalties, Owens maintain they are justified, for the following reasons:

(a) The patents of both Owens and Hartford will eliminate or control competing devices.

(d) Combination represents strength.

Again, take the following example from Herbert Knox Smith's Points of Agreement, dated April 27, 1922 (Government Exhibit 37):

4. It is agreed in principle as follows:

(a) That the Owens patents, particularly Lott, Bock and Brookfield, constitute a menace of greater or less degree to the H-F Company.

(b) That Owens Company is able to contribute substantially to the maintenance of the patent monopoly on gob feed.

(c) That H-F's contribution to such maintenance will be greater than that of Owens Company.

5. That the commercial considerations, involved in considering either an agreement or a conflict between Owens and H-F, are of greater importance than the relative patent [fol. 766] values controlled by the two companies. By "commercial considerations" is meant the domination of outside feeders, the stabilization of the industry tending against irresponsible price-cutting; the general co-operation between the gob and suction processes for an orderly

development of the two side by side, such as will be most beneficial to the interest of the two companies and to the industry; and finally the steadying influence that will be established in the machine side of the industry by a recognized co-operation between the two companies.

* * * * * * *

7. That under some such arrangement as has been generally discussed in these negotiations H.F would have entire discretion as to the licensing of the gob feeders, and Owens would not license its gob feed in competition therewith.

The purpose of Owens to obtain domination through combination with Hartford is beautifully set forth by Mr. Carter in his memorandum of November 7, 1923 (Government Exhibit 611):

Mr. Owens and Mr. Blair separately replied, * * * that the primary object which this company had in view, was the patent control of the feeder field for a term of years, and that in comparison with this, any possible money judgment (even of a million or more) should be regarded as distinctly secondary. They even stated, as their view, that the advantage of having the feeder field under some patent control is so great, from a business standpoint, that this company would rather see such control in the hands of Hartford than to have the field open—that consequently if we should lose out on Lott, we would have no interest in holding Hartford in the Patent Office by interference proceedings, or in defeating Hartford's claims in court—that our interest would rather be in aiding Hartford to maintain its control, than to narrow or defeat its patents, or delay their issue.

To my inquiry as to whether we would rely on Hazel-Atlas going with us in this policy, their answer was in the affirmative.

[fol. 767] At the end of this quotation we begin to see the development of the purpose to include Hazel-Atlas in the conspiracy.

Mr. F. G. Smith wrote to Mr. A. D. Falck on June 15, 1932 (Government Exhibit 140):

If deal was made with H-A and patent position does not fail.

Hartford, O, and H-A will have solidified industrial situation and Hartford will be assured substantial income.

* * * * * * *

It has also been agreed by O that they were perfectly willing to share with H-A what they had formerly received from H.

On the same subject Mr. Carter reported to the Owens Board of Directors in his memorandum of July 18, 1932 (Government Exhibit 141):

However Hazel-Atlas' initial payment of one million dollars cash is first to be equally divided between Hartford and Owens-Illinois. Furthermore, Hazel agrees to pay royalties hereafter on its entire production of ware on feeders involving licensed inventions, which is expected to so increase Hartford's divisible income that our net will remain unproduced by reason of the change from a one-half split to a one-third split. There is also reason for believing that the Miller Defense Association, and other present users of feeders which have not heretofore paid royalties to Hartford, may come in under Hartford Licenses following Hazel-Atlas, in which case our one-third division of Hartford's net might become even larger than our present one-half.

* * * * * * *

Contracts 4 and 8, being separate Supplemental Agreement between Hartford-Empire Company and Owens-[fol. 768] Illinois Glass Company, and between Hartford-Empire and Hazel-Atlas Company, are designed to take care of the contingency that by some outside influence or decree, governmental or otherwise, Owens-Illinois in the one case, or Hazel in the other, should be unintentionally deprived of its right to participate in Hartford's net.

Here we see the purpose of using the combination with Hazel to compel outsiders, especially members of the Miller Defense Association, to come in under the controlled system. We also note the cool and calculating purpose so to arrange the combination that illegality under the Anti-trust Laws should not destroy the fruits of the conspiracy.

The part which Hazel was expected to play was later expressed by Mr. F. G. Smith in his letter of June 30th, 1933, to Mr. A. D. Falck (Government Exhibit 165):

Hazel cannot expect Hartford to make sacrifices to stabilize the industry and at the same time continue to receive their share and yet not do their part, that fair play and fair dealing just demanded 100% cooperation.

The patent pooling nature of the deals with Owens and Hazel is clearly brought out by Mr. Safford in his letter of April 13, 1933, to Mr. Cole (Government Exhibit 1772 *), as follows:

[fol. 769] Owens owns a great many patents and several of them in 1924 were considered to be of very great value, and if enforced in the courts would have probably broken the Hartford licensing system. Time and greater perspective has considerably weakened their value, but they are still important. Hazel's patents, on the other hand, are not so valuable. They have their own devices pretty well covered, but have nothing which could be called dominant.

The ultimate purpose of obtaining commercial control over the glass-making machinery field which underlay Hartford's acquisition of various competing patents and machines has been well established. For example, the thoughts which underlay the Howard acquisition were thus expresed by Mr. F. G. Smith in his report to the Executive Committee Meeting of Hartford-Fairmont on June 23, 1922 (Government Exhibit 58):

(a) The Howard patents and applications, especially the latter, if left outstanding against us, may be a decided menace to our own patent strength. Howard himself says that he expects that we will get patents on the basic principle of the gob feed, but he will have patents on questions of method and details of machinery perhaps sufficient to deadlock our machines, while we can probably deadlock his.

(b) If outstanding, he presents a very serious competitor commercially.

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* The admissibility of this exhibit is still under advisement.

(c) The sale of Howard to Owens would be distinctly dis-
[fol. 770] astrous, probably the worst single thing that could happen. That Owens has twice tried to buy out Howard, making considerable offers therefor.

(d) The Howard feeder might also go into the field of bulbs and pressed ware.

Mr. H. K. Smith discussed at length with Mr. L. T. Williams the plans for joint acquisition by Hartford and Owens of the O'Neill, Lynch, Miller and Federal interests, in his memorandum of June 1, 1925 (Government Exhibit 76). Here again we have an example of a studied intention to effect a control of competition in such a manner that if it should later be found in violation of the Antitrust Laws, the benefits to the conspirators would, nevertheless, exceed the penalties. Thus Mr. Knox Smith stated in that memorandum, with respect to the Tucker, Reeves and Beatty acquisition:

Of course, the court might order that we transfer the entire Federal licensing business to some other party and turn over to that party the Federal patents. This, of course, would simply restore to a certain extent the existing situation and establish a competitor. It would have either one of two results—either that competitor would be in a reasonably strong position, in which case we could probably dispose of all these assets as a going concern for somewhere near what we paid for them and take our chances with competition. Or, by that time, the situation would be such that it would be practically impossible to restore the old Federal competition even if it had all the Federal patents; in which case we wouldn't get much for the sale of these assets, but on the other hand, the competition wouldn't be serious. Meantime we would have gotten out our own patents; probably had the income from Federal licenses for several years and very possibly also, as a result of the Federal and the other deals, we might have brought in Hazel-Atlas under license. [fol. 771] I, therefore, do not see much danger of having any of these deals upset, as set forth. If they are upset, I still believe that by that time, we will be in a better position even with such dissolution than we would be otherwise; and I can see no danger whatsoever of any criminal liability because the cases are necessarily so doubtful in the matter of

law that they could never get any jury to convict and I doubt if any prosecuting officer would ever attempt any criminal action. Criminal action in cases of this sort, so far, has practically been non-existent.

Some of the thoughts which underlay the acquisition of the Headley and Thompson patent rights are thus well expressed by Mr. Safford in his memorandum of December 5, 1932, to Mr. F. G. Smith (Government Exhibit 1779):

V. Reasons for Not Surrendering Option * * *

1. H & T Prop to Feeder Situation. One of the original reasons for the option on H & T was to secure a possible club in case the feeder situation fell.

The effect of Hartford's combination with Lynch, in carrying out the general purpose of the conspirators, was thus set forth by Mr. C. B. Belknap in his memorandum of October 9, 1933, to Mr. W. E. Levis (Government Exhibit 745):

In order to round out the forming machine situation, the Lynch Corporation purchased the Miller Machine and Mold Works and also took a license from Hartford whereby the users of Hartford-Empire's feeder equipment could have the use of the Lynch and Miller forming machines without the payment of additional royalties. Such an arrangement not only removes the possibility of complicated litigation relating to forming machines, but it brings together into one hand the licensing of feeder and forming machines. * * * it is a long step towards a unit system of licensing whereby Hartford-Empire can furnish the manufacturer with a complete outfit from furnace to stacker at the cost of a single license fee.

[fol. 772] In *Standard Oil Co.* v. *United States*, 283 U. S. 163 (1931), which was discussed in the last quoted opinion by Judge Haney, the Supreme Court further said, through Mr. Justice Brandeis, at p. 174:

Where domination exists, a pooling of competing process patents or an exchange of licenses for the purpose of curtailing the manufacture and supply of an unpatented product, is beyond the privileges conferred by the patents and constitutes a violation of the Sherman Act.

The studied intention of the parties to achieve a domination of the suction process by Owens and of the gob feed process by Hartford may be illustrated by the following language from Mr. Knox Smith's letter of April 22, 1922, to Mr. J. C. Blair (Government Exhibit 34):

As we understand it, this arrangement will practically divide the industry, so far as our two companies are concerned, into two branches—the suction process branch controlled by Owens and the gob feed branch controlled by H-F.

It was the intention, however, to guard against the development of any undue competition between these two processes, for Mr. Knox Smith, in the last-mentioned exhibit, went on to say:

But, of course, we both also recognize that it would be unfortunate to have this parallel development of the two processes reach a stage where competition between the two became generally destructive and unstabilized. With this in view we have accepted the proposition that restrictions tending to preserve stability shall be imposed, and, of course, it is just as important that the suction process and any future development of it should not be used to unstabilize the industry, as it is that the gob process should not be so used.

[fol. 773] The intent which underlay the domination of the Forming machine field is illustrated by the following statements of Mr. F. G. Smith in his memorandum of July 15, 1924, concerning the Headley and Thompson applications (Government Exhibit 295):

We should bear two things distinctly in mind:

1. Insurance against attack.

2. How far can these applications be made to really dominate or control automatic Forming machines?

If some kind of control of Forming machines can be obtained, it will be a distinct advantage to us as a licensing company and will practically put us into a position where any bottle manufacturer will be forced to come to us for his equipment.

Hartford's intent in this respect is also illustrated by the following language of Mr. Safford in his memorandum of December 5, 1932, to Mr. F. G. Smith (Government Exhibit 1779):

men here who wrote it, it is permissible to ask him if he meant it, and what he knew about the facts in it. But the document itself is something else.

Mr. Isseks: I offer the document and its contents because the witness wrote it.

Mr. Sayles: If Your Honor please, I should like to add to that objection, that there are a number of statements made in that which are hearsay; and it is an unsworn statement.

The Court: I am going to overrule the objections and permit the document to be admitted generally, on the theory of course, and with the reservation on the part of the government, with the understanding on the part of the government that these documents shall have no application to the [fol. 1253] several defendants until and unless the appearance of these defendants as a part of a conspiracy has been shown. The document will be admitted on the theory that it has some bearing upon consecutive events and the history of the matter, from which the intent may be gleaned.

The Court: You may proceed.

Mr. Isseks: I should like to read Government's Exhibit No. 2 into the record.

Mr. Haight: Are you reading it in order that it go into the stenographic transcript?

Mr. Isseks: Right.

Mr. Haight: Do you not think we will save time—if His Honor has read this particular agreement—if we do not put it in the stenographic transcript, but hand the exhibits to His Honor in a book?

Mr. Isseks: I have no objection to not reading it providing counsel let the stenographer keep it. I should like to have it in the record for my convenience, counsel's convenience, and the court's convenience. It will not be expensive.

The Court: I had in mind at first when you began that in a case involving the large number of exhibits which will undoubtedly be offered here, perhaps it might be more convenient for the court, if he receives a copy of this record every day, to follow the exhibits therein contained through the simple reading of the record. Then there was your suggestion that the matter might be more convenient for the court if he had the exhibits in order to refer to as he read the record. It might be more convenient.

[fol. 1254] Mr. Isseks: That is all right with us, with this suggestion: we should like to furnish the court with a copy of the exhibits daily, at the same time he gets a copy of the transcript of the minutes. With that understanding it is perfectly satisfactory to us.

The Court: Very well. Proceed.

Mr. Emery: If the Court please, I do not understand as to how we are to be informed as to the contents of these documents.

The Court: You are to receive copies of these documents in advance. Counsel has agreed to have either photostats made or his stenographers make copies in advance of each day; so that you may receive copies and know in advance what will be offered that day.

Mr. Isseks: That is all right with us. Mr. Middleton said he would be satisfied with a list of exhibits. If other counsel want copies, if counsel would undertake to pay the cost of photostats, we would rather have it photostated. These girls are busy and the documents are voluminous.

The Court: I should think it would be more advantageous to the defendants if they had photostats, because they would have signatures and accompanying notes on the documents you would not receive from stenographic copies.

Mr. Wall: We will consider that and see if we can suggest an arrangement during the noon hour.

Mr. Middleton: Mr. Isseks did not understand my statement. I did not mean I was satisfied with the list. I said that would help if we could not do anything else. Certainly if copies can be provided for other counsel, we want a copy in advance.

[fol. 1255] Mr. Isseks: I should like to make a request of counsel for the defendants that they confer among themselves during the recess and designate one lawyer with whom we deal. We will furnish him to-day with the number of documents we intend to use to-morrow. And I wish to point out in some instances all we have is a copy of an original, and can only furnish the people what we have been given.

The Court: It may be more convenient in some instances to have stenographic copies. And it may be more efficient in many instances if the defendants have photostats. You had better work that out.

Q. Mr. Smith, I hand you Government's Exhibit No. 2, again, and direct your attention to the paragraph num-

bered 1, and ask you whether that paragraph which you wrote in 1916 does not refresh your recollection that Owens was intending to develop a simple feeder to be used in conjunction with the present semi-automatic machines?

Mr. Middleton: Objection, Your Honor. The question clearly calls for what Owens was thinking. This gentleman is not competent to state that.

The Court: It asks whether or not he does not know that it was Owens' intention.

Mr. Isseks: That is the question: does it refresh his recollection of what he knew at that time as to Owens intention.

Mr. Middleton: That is something he could not know: what Owens' intention was.

The Court: He may answer the question, if he knows.

[fol. 1256] A. In 1916 when I wrote this memorandum, we were a very small, little company. Mr. Honiss, one of the associates in the company, handled our patent affairs. I think I testified a little while ago I did not know of any feeder in 1916 that Owens was developing. This merely refreshes my mind to this extent, that there were probably rumors that came to us in 1916, which, I explain, "are to all appearances"—rumors. Mr. Honiss was not a patent lawyer. He was a patent solicitor. Mr. Dorsey was a patent lawyer with offices in Washington, D. C. and if the Owens Company were attempting or about to attempt to develop a feeder, we wanted to know it, naturally. So my suggestion was here that Mr. Dorsey be acquainted with our situation, and be held on a retainer. I don't think we had any definite information; we had rumors. We were a little bit of a company just trying to learn to creep; and if a large company, successful company, like the Owens Company, were about to parallel, or do something different than what we were doing, I certainly wanted to know it. I thought it was good business; still think so; and I emphatically deny it had anything to do with a conspiracy.

Mr. Isseks: I will not move to strike out the last part of the answer. I will let it stay there.

Q. Going over the same numbered paragraph 1, I ask you whether that refreshes your recollection as to where you heard the rumors, or from what source you heard the information set forth in the first part of that numbered paragraph, which reads: "Inasmuch as the Owens Company are to all appearances intending to develop a simple

feeder to be used in conjunction with the present semi-[fol. 1257] automatic machines on the market and that they intend to license independent narrow neck manufacturers" —where did you get those rumors from, do you recall?

A. I cannot tell you. Probably they came from several sources.

Q. You cannot recall the sources you got them from?

A. Not at all.

Q. When you state there, "Owens to all appearances is intending to develop a simple feeder", you had in mind, did you not, that Owens was intending to develop a feeder different than their suction machines?

A. I would judge so.

Q. That is your best recollection?

A. It would be, yes.

Q. In 1916 or 1917 you knew, did you not, of the fact there was an application in the Patent Office by one Steimer?

A. That is correct.

Q. You had connected with your company at that time a gentleman by the name of Peiler?

A. One of the original members of the company, and still a member of the company, and was the man that was developing and inventing a great deal, the larger part of our equipment.

Q. Was there any patent application in the Patent Office on any patent on automatic machinery of Peiler's, in 1917?

A. Oh yes.

Q. Had a patent issued at that time?

A. That I could not tell you. I don't remember.

Q. You don't recall the issuance of a patent as of that date?

[fol. 1258] A. No sir.

Q. Did you have any recollection of any efforts made by you as general manager of Hartford-Fairmont to purchase the Steimer application?

A. We did purchase the Steimer applicaton.

Q. Who was responsible for the negotiations leading up to that purchase?

A. I don't know; but I assume Mr. Honiss took a leading part; and probably Mr. Dorsey.

Q. Do you have any independent recollection of how much that patent application cost your company?

A. I think somewhere between $2,000 and $2,500.

Q. See if I can refresh your recollection. I should like to have these documents marked.

Q. I show you a document marked for convenience Government's Exhibit No. 3, which is a telegram dated February 8, 1917, from Mr. Honiss to your company; another document, marked for convenience Exhibit No. 4, and purports to be a reply to that telegram, dated February 9, from yourself to Mr. Honiss; and a third document, marked for convenience Government's Exhibit No. 5, which purports to be a letter from Mr. Honiss to the Empire Machine Company, with copies to Messrs. Dorsey and Cole and yourself; and ask you whether those documents refresh your recollection as to the purchase?

A. I think those are all correct.

Q. The documents you say are all correct?

A. I think so, yes.

Q. The documents show the nature of the transaction, do they not?

[fol. 1259] A. They do.

Mr. Fuller: We object to each of them.

Mr. Middleton: Also show an objection on the part of Owens, if that is necessary.

The Court: I don't think that is necessary. There is one objection.

They may be admitted.

Mr. Fuller: If the Court please, at the risk of some repetition, these documents and documents in the future offered by counsel for the government, are offered, and such of them as are received, are received, subject to each of the various defendants being connected up with the alleged conspiracy; and subject to the right of each of the defendants to make appropriate motions in the event they are not connected up.

The Court: That has been the representation of counsel for the government, and the understanding upon which the court is admitting these.

Q. Mr. Smith, in 1919, in the early part of the year, your company had already issued licenses, had it not, to various manufacturers of glassware?

A. That is correct.

Q. At the time was the Empire Machine Company engaged in the manufacture of automatic machinery for glassware?

A. I think the Empire Machine Company developed a forming machine, what they called the Canfield machine.

Q. A forming machine was used then in conjunction with a feeder machine in the manufacture of glassware?

A. Correct.

[fol. 1260] Q. What is your present recollection as to the earliest negotiations between Hartford-Fairmont Company and Empire Machine Company and Corning Glass Works, which ultimately resulted in the 1922 contract?

Mr. Middleton: Objection on the part of the Owens-Illinois group. It is entirely irrelevant and immaterial as far as they are concerned.

A. As far as my memory serves me, I would say that from the latter part of 1919 up until the time the Hartford-Empire Company was organized, we had fairly close relations with the Empire Machine Company; not so much in 1919 or 1920; but certainly increasingly close relations in 1921, and 1922, at the time of the contract.

Mr. Isseks: For the record I state I have had marked for convenience Government's Exhibit No. 6, a document which is entitled on the top "Suggested by F. G. S.", with the handwriting underneath, "probably about Jan 30 1919." Before asking the witness any question, I should like to show it to counsel for Hartford.

Q. I show you a document marked for convenience Government's Exhibit No. 6, and ask you, first, whether that refreshes your recollection as to the time of the earliest conferences relating to the arrangement which finally concluded in the Hartford-Empire agreement of 1922?

Mr. Middleton: Objection.

Q. The question was, Mr. Smith, whether it refreshes your recollection as to when the negotiations first started which ultimately resulted in the 1922 agreement?

[fol. 1261] A. I was probably a year off in my memory.

Q. Is that your handwriting on top of it?

A. No sir.

Q. Do you recognize the handwriting?

A. Yes sir.

Q. Whose?

A. Mr. Honiss'.

Q. He is now dead?

A. Yes sir.

Q. You have seen his handwriting many times?

A. Very frequently.

Q. In connection with the work of the company?

A. Correct.

Q. He was of course familiar with the negotiations that went on the early part of 1919?

A. This is merely a suggestion from me to Mr. Honiss. I can't tell you when anything was followed up on this suggestion.

Q. You say you were about a year off?

A. I said when I previously—I said I thought from 1920 or the latter part of 1919. I can't tell you just when the negotiations really started, or when the things written in this memorandum were taken up with the Empire people.

Q. After looking at the documents is your recollection refreshed that it was in the early part of 1919?

A. I would say yes.

Q. You recognize that documents, do you not, as a document dictated by you?

A. Correct.

[fol. 1262] Q. Dictated by you in your capacity as general manager of the Hartford Empire Company?

A. Correct.

Q. I should say the Hartford-Fairmont Company?

A. That is correct.

Mr. Isseks: I offer it in evidence, Your Honor.

Mr. Haight: Objection, if Your Honor please. It is merely some ideas that were running through Mr. Smith's mind that were put down on paper; and in the absence of proof that those things were actually done, of course what Mr. Smith may have thought at that time is not evidential. If we were all to be tarred by what we have thought, and sometimes by what we would like to do and did not do, we would be in a difficult position.

[fol. 1263] Mr. Middleton: May I add our objection before you argue. With your consent I should like to urge one special objection to this which has not yet been named. On behalf of Owens we renew the objections we made to documents similar to this previously this morning; and call the attention of the court to this fact, that this transpired in 1919 in the mind of Mr. Smith; and that the allegations are that Owens entered a conspiracy in 1924; and it is specifically stated in the pleadings that they entered a conspiracy by making the agreement of 1924, which is in the hands of the government and will doubtless be in this case.

[fol. 1264] Certainly the extent to which Owens partici-

pated in any arrangement, whether conspiracy or not, is determined by what the 1924 agreement provides, and that only; and as Judge Haight has just suggested, there might be rambling thoughts here or suggestions of a thousand kinds, that were not eventually culminated into any agreement between Owens and any one else. If so this would be entirely immaterial. We cannot wait until that time to voice our objections. We call the court's attention it is not competent proof of what Owens did in 1924. If anything the agreement of 1924 is the measuring stick for that.

Then may we call the court's attention to this as a further basis for our objection to this and other similar documents, in view of the specific allegation that Owens entered into a conspiracy by the agreement of 1924. The same pleadings admit that the 1924 agreement was completely cancelled and went out of existence; and the documents in the hands of the government further show that the agreement of 1932 was cancelled and went out of existence. And so the documents that the government has said put Owens into a conspiracy, by their own pleadings have gone out of existence; and we are still that much further removed from a situation which might have been contemplated by these documents.

The Court: I think it is the government's contention that the effects of those agreements still continued, so far as their charge of the present conspiracy, at the time the com-[fol. 1265] plaint was filed are concerned, is that correct?

Mr. Isseks: That is right, Your Honor.

Mr. Middleton: There may be some indirect effect remaining from anything that happened in the past; but when they claim the conspiracy was made by a certain instrument; and then are admitting that instrument and all that went with it was completely cancelled and it went out of existence, they are not in a position to claim the continuing existence of any arrangement which they set up there.

Q. Were you a director at that time?

A. I think so.

Q. You were general manager, were you not?

A. Correct.

Q. You were engaged in determining the policy of the company, were you not?

[fols. 1266-1273] A. Along with the rest of my associates.

[fol. 1274] The Court: The Court has already ruled on the first proposition that has been raised here, citing from the

opinion of Judge Hand in the Court of Appeals report. Inasmuch as it applies to inter-company exchange of documents between officials of the company, I do not think it is necessary for the Court to repeat the position that he has taken on that question.

As to the question raised by Mr. Middleton on the claimed cancellation of the 1922 contract of Owens, the 1924 contract claimed to have been cancelled in 1932—I believe that is [fol. 1275] correct—I think probably it is the contention of the government that, admitting the contract to have been cancelled, the effects of that arrangement still exist; or that while the actual contract was cancelled, yet the spirit of the contract still obtains.

Mr. Isseks: That is right, Your Honor.

The Court: If that is the contention of the government, there is no reason why the Court should not permit this class of evidence to be offered and accepted at this time: Always, of course, upon the assumption that counsel's representation would be maintained, which would require him to show a participation in the conspiracy by, for instance, the Owens Company.

Mr. Isseks: That is right.

The Court: I therefore overrule the objection.

Mr. Middleton: I wish some time during the day to remind the Court and re-offer to take the Court, and anyone else who wishes to go, to the Owens factory. Maybe we can have that up for further discussion this afternoon.

(Noon recess.)

[fol. 1276] (At 2:00 p. m., March 3rd, 1941, the trial was resumed.)

Mr. Isseks: Your Honor, at this time I would like to have my associate, Mr. Kramer, read the last exhibit that was marked in evidence.

The Court: That is No. 6.

Mr. Isseks: That is right.

(Mr. Kramer read Exhibit 6, dated "Probably about Jan. 30, 1919.")

Q. In 1919 what was Corning's business as distinguished from Empire Machine's business?

A. Empire Machine Company was purely a machine development company. Corning Glass Works were manufacturers of special glassware.

Q. And at that time, in 1919, your company and the Empire Machine had jointly purchased the Steimer heated-hood patent?

A. That is correct.

Q. For a sum you testified before was $2300, I believe?

A. Yes.

Mr. Haight: Just a minute. I think you misunderstood. You said the "Steimer heated-hood patent." That was not the heated-hood patent.

Mr. Isseks: I think they called it that in that telegram, Exhibit 4.

Mr. Haight: They are two different things.

Mr. Isseks: I am sorry. I am very sorry. It should be the Steimer patent. I mis-spoke myself.

Q. Do you have any independent recollection as to when the Steimer patent was applied for?

[fol. 1277] A. Very early.

Q. 1910—does that refresh your recollection?

A. I would have to take your word for it.

Q. Do you know that one of the patents did not issue until, I believe, 1937?

A. That is correct.

Q. In other words, the patent that was applied for in 1910 was issued in 1937, and having 17 years to run, would run out in 1954?

A. Yes.

Q. You paid $2300.00 for it?

A. Yes.

Q. Now, at the same period of time, 1919, Owens had a patent, did it not, the so-called Lott Patent?

A. There was a Lott application in the office.

Q. I see. Who owned that?

A. Well, Owens eventually purchased it. Just the date they purchased it, I do not recollect.

Q. And did that patent cover the suction, or feeder, machinery?

A. The feeder machinery.

Q. Just prior to the recess I asked you to look at a document, which I am going to ask be marked, for convenience, government's Exhibit No. 7, and I now hand you that document and ask you whether during the recess you examined it?

A. I did.

Q. You wrote that document, did you not?
A. I did.

Mr. Middleton: I would like to at least thumb through the pages.
Mr. Isseks: I am very sorry. I thought we had left copies. [fol. 1278] Can we go ahead?

By Mr. Middleton:

With the understanding that our objection to the examination from the paper will stand as previously noted.

By the Court:

Very well; proceed.

Q. That memorandum is a recitation of a conference that you attended in South Dartmouth, Massachusetts, in August, 1919?
A. That is correct. August 2, 3 and 4, 1919.
Q. And do you remember the conference?
A. I do.
Q. Do you recall who was present at the conference?
A. Yes.
Q. Will you please tell us who was present?
A. Mr. A. B. Houghton, who was chairman of the board of Corning Glass Works, also then in Congress; Mr. A. A. Houghton, President of the Corning Glass Works; Mr. Alexander D. Falck, and Mr. Arthur L. Day.
Q. And you were there on behalf of your company, the Hartford-Fairmont, were you not?
A. That is right.
Q. These other gentlemen represented whom?
A. Mr. Falck represented the Empire Machine Company; Mr. Houghton probably was interested in both companies.
Q. You note in your memorandum you have all these other gentlemen representing, at least in the memorandum, pany and Corning Glass Works.
A. I would accept that—

Mr. Haight: I object to that as calling for a conclusion.
The Court: Objection overruled. It may stand.

Q. Before you went to this conference at South Dart- [fol. 1279] mouth in August of 1919, did you have any conferences with your associates?
A. I may have.

Q. Do you have any independent recollection?

A. No.

Q. In the normal course of business you would talk to your associates before you would attend the conference, would you not?

A. Well, undoubtedly, those in Hartford, associates in Hartford, knew that I was going to attend a conference, going to attend the week-end conference at South Dartmouth with representatives of the Empire Machine Company and Corning Glass Works.

Q. By "associates from Hartford" you distinguish from other Hartford-Fairmont people who were not in Hartford, Connecticut?

A. Yes.

Q. Who were the associates in Hartford whom you would normally tell before going off on a week-end trip to confer?

Mr. Haight: I object as incompetent and immaterial, with whom he normally would confer.

The Court: The objection will be sustained.

Q. Who were the ordinary Hartford associates at Hartford, as distinguished from the non-Hartford associates of the Hartford-Fairmont Company?

A. Well, this is pure guesswork, but I assume I probably took the matter up with Mr. Honiss, Mr. Peiler, and probably both the Lorenzes.

Mr. Haight: I object.

The Court: Objection overruled. It may stand.

Q. After your return from this week-end of August 2, 3, 4 of 1919 in South Dartmouth, do you have any recollection of conferring with your associates at Hartford?

A. Yes, I must have.

[fol. 1280] Q. Who- did you confer with?

A. Probably the same people.

Q. The people you just mentioned?

A. Yes, and probably H. K. Smith. I probably took it up with him.

Q. Now, I ask you to look at government's Exhibit 7. You notice in the right-hand corner it says "Submitted Aug. 8th, 1919." Do you have any recollection of the persons to whom, if you did, you submitted this memorandum on August 8th, 1919?

A. Well, I would assume I would send copies of this memorandum to my directors.

Q. Who were they?

A. —who weren't in Hartford—the Beech-Nut Packing interests and the Monongah Glass interests.

Q. When you said you "assume," you mean that is your present recollection?

A. I would assume I did it. I don't actually remember, but in an important matter like this I certainly would take it up with my directors and send them a copy of the memorandum.

Q. That is the way you did your regular course of business at Hartford-Fairmont?

A. Yes.

Q. This was part of your business as general manager?

A. It was.

Mr. Isseks: I offer this document in evidence.

Mr. Middleton: Objection on the grounds previously stated.

By the Court:

Overruled; it may be received.

• • • • • • •

[fol. 1281] Q. Before reading any further, I would like to have you look at the paragraph I am referring to after the lines, and ask you whether that comment on your part was before your directors as you indicated in your report.

A. I think I sent this to my directors.

Q. Everything from here on was the statement you were making to the directors rather than the statements of the conference you had with the Corning people?

A. I think so, yes.

Q. When you say you "think so," that is your best recollection, is that right?

A. Yes.

[fol. 1282] Q. Continuing to read the next paragraph?

(Counsel thereupon read the remainder of page 5, and the first three full paragraphs on page 6, ending: "I also believe that we will be forced to sooner or later participate financially in some reorganization plans.")

Q. Now in that connection, Mr. Smith, you were referring to the reorganization of some of your licensees, were

you not? I direct your attention to the previous paragraphs.

A. It might have been possible, although we had our own plans for reorganization. I just cannot tell you.

(Counsel thereupon read the fourth, fifth and sixth full paragraphs on page 6.)

Q. I next pass over the 16 succeeding paragraphs, and I want to read one more paragraph, in the middle of page 8: "I think you should also take into consideration the number of new feeders that will be put upon the market, and also the fact that if it is possible for the Owens people to make any vast improvement in their present machines—such as making double and triple 10- and 12-ounce bottles at one time, our problems would at once become more expensive and more difficult—and our dividend day will be further postponed."

Now in connection with your negotiations with the Corning people and the Empire Machine people, who was assisting you during that period?

A. Mr. Herbert Knox Smith, mainly, I think, but on many of the conferences I think Mr. Honiss went along, perhaps one other member.

Q. Mr. Honiss was one of the people who kept you advised, did he not, of various developments in connection with other applications on automatic machinery?

[fol. 1283] A. He was our patent solicitor.

Q. And you asked him, did you not, on occasions in connection with the negotiations with Corning and Empire Machine Company, to collect the information for you that you had to have when you attended these various conferences with the Corning and Empire Machine people?

A. I would assume so.

Q. When you say you assume so, that is your best recollection?

A. Yes.

Q. I hand you a document which is dated October 4, 1919, in the form of a letter from Mr. Honiss to you, and which is being marked, for convenience, Government's Exhibit 8.

* * * * * * *

[fol. 1284] I think that is what I wanted, that last paragraph.

Q. Before handing you this document, I want to ask you—you testified earlier today, as I recall it, that in 1919 or during that period, there was a Federal Feeder, did you not?

A. That is correct.

[fol. 1285] Q. And a Miller Feeder, too?

A. Yes.

Q. And there also was a Howard Feeder?

A. Yes.

Q. Wasn't there also a Lott feeder?

A. I don't remember any Lott feeder. There was a Lott application in the office.

Q. Was there a Graham feeder?

A. I can't tell you whether that was in being or not.

Q. Was there a Macauley feeder?

A. I don't know whether that was in 1919.

Q. Was there a Drey feeder?

A. Eventually.

Q. Was there one in 1919?

A. That I cannot tell you.

Q. Now, I hand you this document, which comes from the files, as I understand it, of your Company; at least so it has been stipulated; and ask you whether you recall receiving the original of that document from Mr. Honiss. (Handed to witness.) My question was whether you recall receiving the original of that letter in 1919?

A. I don't recall it but I must have received it.

Q. There isn't any question in your mind you did?

A. No.

Mr. Isseks: I offer it in evidence.

Mr. Sayles: I object to it, as not binding on the Empire group, or Corning.

Mr. Middleton: Same objection as mentioned in the memorandum.

[fol. 1286] The Court: Objections overruled. It may be admitted.

Q. (Reading): Dated October 4, 1919. Mr. F. Goodwin Smith, General Manager, Hartford-Fairmont Co., Hotel Belmont, N. Y." Marked "Confidential". Before reading that, I would like to ask the witness a question: do you remember having conferences in 1919 with the Corning group?

A. I think I had quite a few conferences.

Q. And there were continuous conferences, were there not, in 1919 to 1922?

A. Off and on.

(Counsel thereupon read said Government Exhibit 8, dated October 4, 1919.)

Q. Now, going back to these conferences with the Corning group, do you have any recollection of conferences held with them at the Hotel Belmont in New York City?

A. No particular conference. I unquestionably did meet them there quite frequently, off and on.

Q. Do you have any recollection of any conference with the Corning and Empire Machine group in which you told them some of the assets of the Hartford-Fairmont Company in aggressive hands such as your own or others might be made very useful in limiting competition?

A. I don't remember that letter.

Q. You don't deny you received it?

A. No, I do not.

Q. Did your Company buy the Hitchcock patent?

A. We did.

Q. Do you recall how much you paid for it?

A. I think it was $10,000.00.

[fol. 1287] Q. I show you a document which is undated but has a stamp thereon, "Received William H. Honiss March 16, 1920", and which is entitled on the top, "Hartford-Empire Agreement from F. G. Smith", and it is marked, for convenience here, as Government's Exhibit #9. First of all I will ask you whether you wrote that document?

Mr. Haight: I am going on the assumption, if Your Honor please, that all of these documents that come within the purview of the documents to which I objected this morning, and which objection was overruled, it will be understood I may have an objection to these?

The Court: Yes. It won't be necessary for you to repeat it.

Mr. Haight: Without repeating it each time?

The Court: Yes.

Q. (Previous question read.)

A. I did.

Q. Do you recall the circumstances under which you wrote that document?

A. I think so.

Q. Will you please tell us?

A. Well, I was trying to put my reasons down, list them in the form of memorandum, giving the pros and cons of the proposed negotiation for the new company of Empire Machine Company and Hartford-Fairmont.

Q. You were general manager of Hartford-Fairmont Company?

A. I was.

Q. And did you pass this memorandum around to any of your associates at Hartford-Fairmont, and in that connection I direct your attention to the same.

[fol. 1288] A. Well, of course, if Mr. Honiss received it, unquestionably my other associates received it.

Q. When you say your "other associates" to whom do you refer?

A. Mr. Honiss, Mr. Peiler, Mr. Herbert Knox Smith.

By Mr. Isseks: I offer it in evidence.

By Mr. Haight: Objection.

By the Court: Objection overruled. It will be received.

By Mr. Isseks: I would like read it. It has a stamp on it which indicates it was received by Mr. Honiss March 16, 1920.

(Counsel reads said Government's Exhibit 9.)

Q. Now, Mr. Smith, do you have any recollection of the frequency of the conferences you had during this period with the Corning group?

A. No, I haven't.

Q. Was there more than one conference, let's say, in New York?

A. I would say yes, sir.

Q. Was there any conference outside of the one you had up at Massachusetts and New York—any other place?

A. I think there were one or two conferences in Corning; and there were in Elmira.

Q. Any in Hartford?

A. I think one or two, I am not sure; I don't remember.

Q. You have already testified on behalf of your Company you participated in the conference, and Mr. Herbert Knox Smith, and Mr. Honiss?

A. That is correct.

Q. Anybody else?

A. Mr. Peiler might have been brought into several conferences. I just don't remember.

[fol. 1289] Q. In addition to the ones you mentioned in the memorandum which has been marked in evidence, the Houghtons, Mr. Falck and Dr. Day, did anybody participate on behalf of Corning?

A. I think probably Mr. Dorsey might have been in on a few of the conferences.

Q. Anybody else?

A. Not that I remember.

Q. Do you remember making a request of Mr. Honiss to give his views as to the advisability of the proposed merger between your Company and Empire Machine Company?

A. I don't happen to remember it but unquestionably I think I would have.

Q. See if I can refresh your recollection. I have here a very small photostat of a carbon copy of a memorandum, and to save your eyes I will show you a typewritten copy which we have had made, which can be easily verified—dated March 17, 1920, and which purports to be from Mr. Honiss to you, with copies to Mr. Arkell, Mr. Cunningham and Mr. H. K. Smith. I would like to have them marked, for convenience, Government's Exhibit 10. (So marked.) I hand you this document and ask you whether that refreshes your recollection that you asked Mr. Honiss to give you his views regarding the proposed merger?

(Question read.)

Q. (Continued:) Do you recall receiving the original of the document which is now in your hand—or copy of it is, rather—which is marked Government Exhibit 10, from Mr. Honiss?

A. Correct.

Q. You do?

A. I do.

[fol. 1290] By Mr. Isseks: I would like to offer that in evidence.

By Mr. Haight: As the same question may arise again, Mr. Honiss being dead, not subject to any examination, we object to the document for any other purpose than merely the fact that Mr. Smith asked for an opinion and received it, but without any evidential value as to the views therein

expressed, if there can be such limitation. Otherwise we would object to the document on the ground that the person who has made it cannot be subject to cross-examination.

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By the Court: Objection will be overruled. It will be admitted.

By Mr. Haight: May the same objection be considered to all documents of this same purport?

By the Court: They may be noted.

• • • • • • •

[fol. 1291] Q. I will reframe my question: You will note on page 3, the paragraph 8, Mr. Honiss made a point that the Corning people were not to be left free to use or to license others to use any of their prospective new glasses for the making of ware which would enter into competition with "our lines of ware". My question is, did you make that point in any negotiations with the Corning people?

A. I think so, yes.

By the Court: You may suspend.

Mr. Isseks: I would like to make a request. We have subp-enaed for the first day of the trial, in addition to the witness on the stand, Messrs. Underwood, Brown and Falck. I think it is quite obvious to the Government we will have this witness here for at least the rest of the week. I would like to make the statement so it won't come as a surprise. We expect to prove as much of the case as we can through this witness. I would like Your Honor to excuse, if they wish to be excused—although Mr. Brown may wish to stay as associate counsel—to excuse Messrs. Underwood, Brown and Falck until they receive notice from the Government. We will try to give them 24 hours' notice.

[fol. 1292] The Court: It may be so understood; they will be excused.

(It was thereupon agreed that the hours for holding court would be from 10 a. m. to 12:30 p. m. and 2 to 4:30 p. m.)

Mr. Middleton: May it please the Court, I wish to remind the Court of our suggestion made last fall, that the Court and all counsel who desire to go, visit the plant at Alton, Illinois, to where these machines which will be discussed, are in operation. I repeat the suggestion and I request that the Court and interested counsel make that trip. We

believe it would be highly beneficial, and we would very much like to have it done. We have the arrangements made, if the Court desires to avail himself of that privilege, and the cars to meet the train any time we want to go. We will have an overnight ride to Edwardsville, Illinois, and be there in the morning, and returning the same evening on the sleeper, which will be a waste of one day. We believe, if the Court desires to do it, it would be profitable to do it as early as possible in the trial.

(Further remarks as to the best time for making the said visit.)

The Court: We can think it over and let you know.

(Thereupon adjournment was taken to 10 o'clock a. m. of the following day.)

[fol. 1293] (At 10 o'clock a. m., Tuesday, March 4, 1941, the trial was resumed.)

F. Goodwin Smith resumed the stand and was further examined by Mr. Isseks:

Q. Mr. Smith, in connection with your negotiations with Corning, was there any discussion about your Company furnishing Corning with feeders?

A. Not for the field of ware under which Corning had rights.

Q. Don't you recall that through Empire Machine you furnished Corning with certain feeders in 1920?

A. I know we furnished Corning with feeders in 1920.

Q. Perhaps I can refresh your recollection. I show you a document which I will have marked for convenience Government Exhibit 11, and direct your attention to the last paragraph, #3.

Mr. Wall: I would like to know the document you are using for that purpose.

Mr. Isseks: This document purports to be a letter written by the witness, under date of April 9, 1920, to Mr. Honiss. I will withdraw my other question.

Q. I ask you whether you wrote that Letter, of which that is a photostatic copy.

A. I did.

Q. Now, looking at the paragraph #3, does not that refresh your recollection that you did furnish Corning with certain feeders in 1920?

A. I think that is correct.

Q. Now, I would like to show you another document. So that the gentlemen will know what I have, I couldn't furnish [fol. 1294] this last night because we didn't dig it up until about 11:30. This is a document dated February 19, 1920, which appears to be written by the witness to Mr. Honiss. I would like to have it marked Government's Exhibit 12. (So marked.)

Q. I show you Government's Exhibit 12 and ask you whether you wrote the original of that letter.

A. I did.

By Mr. Isseks: I offer it in evidence, Your Honor. This is from the witness to Mr. Honiss.

Mr. Wall: May we see what it is?

By Mr. Isseks: I am very sorry. We didn't dig it up until late last night. I don't hear any objection.

The Court: Without objection, it may be admitted.

Mr. Middleton: Is that going in under objection? Several of us wish to have our objection noted. I think our objection should be noted even thought there is no mention of the parties we represent, because it is something that may later be used against us.

Mr. Isseks: That is true.

Mr. Middleton: We don't admit for a minute there is anything against us, but if it is going to be used for that purpose we object to it.

The Court: Objection is overruled. It may be admitted.

(Government's Exhibit 12 read by Mr. Isseks.)

Q. You wrote that letter?

A. I did.

Q. Was it the policy of your Company in 1920 to retain title to any feeders you sent to any people, whether licensees or otherwise?

[fol. 1295] A. It was.

Q. And it has been your policy, the same policy, since 1920 up to the present time?

A. Correct. There were some exceptions to that.

Q. You want to qualify your answer?

A. No; no, there were certain exceptions later on where people had feeders of their own to which we did not acquire title.

Q. Well, long before this letter or in the history of your business?

A. Correct, in the history of our business.

Q. You are referring to the Hazel-Atlas?

A. Yes.

Q. You are referring to Ball Brothers?

A. Yes.

Q. And you are referring to a situation in connection with the Anchor Cap Company?

A. No.

Q. You are not referring to that?

A. No.

Q. But you did have in mind when you said there were exceptions, Hazel-Atlas and Ball?

A. Yes. But the Corning Glass Works, under our agreement, had the right to build paddle feeders themselves under our invention, and title did not come to us.

Q. What about Owens? Did Owens always give you title to all the equipment?

A. Yes. Well, they gave us title to all our own equipment [fol. 1296] we furnished.

Q. You want to add to your answer?

A. No.

Q. I will hand you again the document marked Government's Exhibit 11 and ask you in relation to that document who Mr. Ashcraft was, or is?

A. Mr. Ashcraft was general attorney of the Illinois Glass Company.

Q. Now, the Illinois Glass Company in 1920 was located where?

A. Alton, Illinois.

Q. Was he inside counsel or outside counsel?

A. Outside counsel.

Q. Was he a director of the Illinois Glass Company, as far as you know?

A. I have no idea.

Q. He didn't represent Hartford, in any event?

A. No.

Q. Now, the Illinois Glass Company, is that still in existence?

A. No, that is now the Owens-Illinois—the two companies.

Q. Illinois Glass Company later on sold most of its assets to a company later on known as Owens-Illinois Glass Company, as far as you know?

A. As far as I know.

Q. Was the Illinois Glass Company, in 1920, a licensee of your Company?

A. Yes.

Q. As far as you know, was that company also a licensee of Owens Bottle Company?

[fol. 1297] A. Yes.

By Mr. Middleton: I object.

By the Court: Overruled.

Q. So that in 1920, Illinois Glass Company was a licensee of your Company and also a licensee of automatic machinery from the Owens Company?

A. So I understood.

Q. Now, do you recall having any conversation with Mr. Ashcraft with regard to the negotiations that you were having in 1920 with the Empire Machine Company and Corning Glass Works?

A. I think I advised Mr. Ashcraft in general something about the negotiations; what, I cannot remember.

Q. Don't you recall the reason you did that was because Illinois Glass was one of your largest licensees?

A. No, I think that Ashcraft, at certain times, asked me for information; at others we gave it to him.

Q. When you were talking to Mr. Ashcraft about the negotiations you were having with the Empire Machine and Corning groups, he was representing Illinois Glass Company, was he not?

A. I think so, yes.

Q. He was their agent for that purpose?

A. I don't know about being agent.

Q. He was their attorney for that purpose?

A. He had been their attorney for years.

Q. When you talked to him, you talked to him in his capacity as a representative of Illinois Glass Company?

A. As their legal representative.

[fol. 1298] Q. Now, don't you recall that sometime in 1920, in a conversation you had with him, he raised the question as to whether or not Empire Machine Company

could use your feeder in the manufacture of prescription or other competing lines of ware; do you recall that?

A. I recall that Mr. Ashcraft asked what rights the Empire Machine Company had.

Q. See if I can refresh your recollection. Will you please look at the document, marked for convenience Government's Exhibit 11, the paragraph which is numbered 1, which you wrote to Mr. Honiss; see if that refreshes your recollection as to the conversation you had with Mr. Ashcraft.

A. I would think my answer already covered this, Mr. Iseeks; I don't remember particularly the one particular one or another particular one. He asked us what rights Empire Machine Company had in our machinery.

Q. Now, you wrote in that letter: "We have agreed to furnish Mr. Ashcraft, attorney for the Illinois Glass Company, with some kind of statement which will satisfy his company that the Empire Company has not a right to use our standard paddle-needle feeder in the manufacture of prescription ware or other competing lines of ware as covered by Illinois contract." You wrote that, did you not?

A. I did.

Q. You wrote that as a result of conversation you had with Mr. Ashcraft?

A. Undoubtedly so.

Q. In 1920 was the Hocking Glass Company one of your licensees?

[fol. 1299] A. It was.

Q. Who was the head of the Hocking Glass Company?

A. Mr. Collins.

Q. The man you dealt with?

A. Yes.

Q. There are a number of Collinses in this industry. I would like to know whom you refer to.

A. I. J. Collins.

Q. In 1920 was Mr. I. J. Collins in any way connected with the Hartford-Fairmont Company?

A. Licensee.

Q. Subsequently he became a director of the Hartford-Empire Company, did he not?

A. He did.

Q. Did you have any conversation with Mr. Collins in regard to the negotiations your company was having with the Empire Machine and Corning group in 1920?

A. Not that I recollect.

Q. Did you have any conversations with anybody else at the Hocking Glass Company with regard to that subject-matter?

A. Not that I recollect.

Q. If you dealt with anybody at the Hocking Glass Company you dealt with Mr. Collins at that time?

A. Yes.

Q. Did you have any conversation with Mr. Collins in 1920 with regard to rights that his company would like to have in connection with feeders for certain types of blown glass electric light shades?

[fol. 1300] A. We did.

Q. Then will you please tell us the substance of the conversations? I direct your attention to paragraph 2 of the letter which has been marked Government's Exhibit 11; see if that refreshes your recollection.

A. Well, the Hocking Glass Company requested a license to make shades by the use of our feeder, ordinary lamp shades, electric light shades as well. The question in mind was did our contract with the Empire Company or the Corning Company, where they held certain rights to illuminating ware, could an ordinary electric light shade come under that definition? So there was a question had to be straightened out.

Q. And in paragraph 2 of the letter which is marked Government's Exhibit 11, and which reads as follows: "Hocking Glass Company would like very much to use our feeder in making the ordinary common blown glass electric light shade. We would like to license the Hocking Glass Company to make these shades by the use of our feeder and some other forming machine, and it is the opinion of Herbert Knox Smith that our present contract with Empire permits us to grant this particular license to the Hocking Glass Company. Will you kindly discuss these two points with Mr. Dorsey and arrive at a definite decision?" You wrote that after you talked to Mr. Collins?

A. I would assume so.

Q. When you say you would assume so, that is your best recollection?

[fol. 1301] A. Yes, when he made the application, naturally, I talked to him, and there being that question as to whether an ordinary shade could be called an article of illumination, was a question I wanted to be perfectly clear on before we granted a license to the Hocking Glass Company.

Q. Now directing your attention to the paragraph numbered 3, you again raised, did you not, the question which was raised in Government's Exhibit 12, a document which is dated, I believe, a few months earlier,—say in February,—the question as to whether Corning would permit you to retain title to the four feeders which you had shipped to the Corning Glass Works—you raised that question again in this letter?

A. I did.

Q. The letter reads: "we must retain title to the four feeders recently shipped to Corning"?

A. I had no reply to the other letter so I asked Mr. Honiss to again call it to their attention.

Mr. Isseks: We offer that in evidence.

Mr. Emery: We object to it.

The Court: Objection overruled. It may be admitted.

Q. Now, you received a reply to that letter, did you not?—and I show you a carbon copy of what purports to be letter of April 15, 1920, from Mr. Honiss to you, and copy to Mr. Smith, which is marked for convenience Government's Exhibit 13. My question is whether you received this reply in the regular course of business?

A. (After examining same.) I did.

Mr. Isseks: I offer it in evidence, Your Honor.

[fol. 1302] Mr. Wall: May I see it?

By Mr. Isseks: We furnished counsel with copies of all the documents except one we intend to use today. I don't know that there is objection.

Mr. Middleton: Yes, there is objection.

By the Court: Overruled. It will be admitted.

By Mr. Isseks: I will ask my assistant, Mr. Kramer, to read this letter.

(Mr. Kramer thereupon read letter marked Government's Exhibit 13.)

Q. In 1920 one of your directors was a gentlemen by the name of Cunningham, was he not?

A. He was.

Q. Where was Mr. Cunningham?

A. Mr. Cunningham was an officer of the Monongah Glass Company.

Q. You testified yesterday Monongah was one of the organizers of the original Hartford-Fairmont Company?

A. That is correct.

Q. You certainly, while you were having negotiations with the Corning and Empire group, advised your various directors of the progress of the negotiations?

A. That is correct.

Q. Is Mr. Cunningham now a director?

A. No.

Q. Was he a director of Hartford-Empire?

A. I don't think he was ever a director of Hartford-Empire.

Q. After the Hartford-Fairmont was merged into Hartford-Empire, he ceased to be a director?

[fol. 1303] A. I think so.

Q. I show you a very poor copy of a letter here, and to protect your eyes I will give you my copy, and unless counsel have a better copy I will ask to have this one marked. I show you this document which purports to be a carbon copy of a letter which you wrote to Mr. Cunningham, dated May 19, 1920. Unless counsel objects, I would like to mark copy of the document, a Chinese copy, dated May 19, 1920, in evidence. I show you that copy, marked Government's Exhibit #14 for convenience, and ask you whether you wrote that letter.

A. I did.

Mr. Isseks: I offer it in evidence, Your Honor.

By Mr. Emery: Objection.

The Court: The objection will be overruled. It may be received.

By Mr. Isseks: I would like to have my associate read the letter.

The Court: It may be read.

(Thereupon Mr. Kramer reads Government Exhibit 14, addressed to R. T. Cunningham, Monongah Glass Company, Fairmont, W. Virginia.)

Q. In that letter you referred to an Ernest Walker Smith, who was he?

A. He was a brother of Herbert Knox Smith.

Q. Did Mr. Ernest Walker Smith have any business relation with Hartford-Fairmont Company?

A. He was a stockholder.

[fol. 1304] Q. Was he an officer of any kind?

A. No.

Q. An employee?

A. No.

Q. He was a lawyer?

A. A lawyer. He gave up his law in 1919, I think, or '20, when he became president of the Hartford Special Machinery Company.

Q. He was a large stockholder in the Hartford Special Machinery Company, as far as you know?

A. As far as I know.

Q. You are a stockholder, are you not, in Hartford Special Machinery Company?

A. No, I never have been. Not one share.

Q. Mr. Herbert Knox Smith is a stockholder?

A. He was.

Q. Was Mr. Herbert Knox Smith a stockholder of Hartford-Fairmont?

A. He was.

Q. Was he a stockholder of Hartford-Empire later on?

A. He was.

Q. And he had substantial stock interests, did he not?

A. Fairly substantial.

Q. And he was also secretary, I believe you testified, of Hartford-Fairmont Company?

A. Well, he didn't become an officer in the Hartford-Fairmont Company until 1922. Up to that time he gave us part of his time as legal adviser, not full time.

[fol. 1305] Q. But you say he became secretary of Hartford-Fairmont in 1922?

A. Became an officer in 1922.

Q. What position did he hold in Hartford-Empire Company after it was organized?

A. He was secretary, then at one time I think he was assistant treasurer.

Q. Later on he became treasurer?

A. It is right there in the record.

Q. That is right. But later on he became treasurer?

A. Yes.

Q. Now, in these negotiations which you had with the Corning people which resulted finally in the Hartford-Em-

pire agreement of 1922, you testified yesterday Mr. Honiss and Mr. Herbert Knox Smith were with you in the various negotiations. Am I summarizing your testimony correctly?

A. Well, Mr. Herbert Knox Smith was with me at certain times. Sometimes I was alone. Sometimes he was with me. I just don't remember about all those various meetings.

Q. Now, Mr. Herbert Knox Smith sometimes turned over to you, did he not, letters that he received in connection with the business of the company?

A. Only, I suppose, when he felt it was necessary to have them come to my attention. I am not conscious that he kept turning over letters to me.

Q. Do you recall you received letters from various people which you turned over to Smith for reply?

A. Whenever I thought the subject-matter was such he would deal with on the legal end of the business, he could [fol. 1306] reply better than I could, I probably have.

Q. Mr. Smith, when he became secretary of the Hartford-Empire Company, had the usual duties of the secretary of a company, did he not?

A. Yes.

Q. He was in charge of the records of the company, was he not?

A. Yes.

Q. Later on, you remember, there was an occasion for your company and another company—we will come to that later—organizing Feeder Patent Company, do you remember that?

A. I remember there was such a company.

Q. And Mr. Herbert Knox Smith became treasurer-secretary of that company, didn't he?

A. I have forgotten.

Q. Whatever the records show?

A. Whatever the records show is correct.

Q. I believe you testified Mr. Herbert Knox Smith was a stockholder of Hartford Special Machinery Company. He was also president of that company, was he not, as far as you know?

A. I don't remember.

Q. Was Mr. Herbert Knox Smith at any time on the board of directors of the Hartford-Fairmont Company?

A. Not until January, 1922, I think, just before the getting together with the Empire Machine Company.

Q. Was he ever a member of the board of directors of Hartford-Empire Company?

A. He was.

[fol. 1307] Q. Was he on the executive committee, if you have such a committee? Do you have such a committee?

A. We did.

Q. You did at one time?

A. At one time.

Q. Was Mr. Herbert Knox Smith a member of that executive committee?

A. He was.

Q. For how long a period of time?

A. I don't remember.

Q. Up till he died?

A. Well, I would have to look up whatever the record showed.

Q. For the purpose of the record, Mr. Herbert Knox Smith died in 1931; isn't that true?

A. That is right.

Q. Mr. Herbert Knox Smith had a custom, did he not, of writing memoranda of conferences?

A. Very definitely.

Q. Since you smile at that, now Mr. Smith, was that habit of his such that he did it very frequently?

A. I would think he did.

Q. In other words, whenever he attended a conference he made a memorandum?

A. Yes, as far as I know.

Q. Quite frequently he made memoranda of conferences you attended?

A. That is correct.

Q. Quite frequently he made notes of those conferences, did he not?

[fol. 1308] A. I would assume he did, but I couldn't speak as to what he did after the conferences. I merely know he wrote a great many memorandums.

Q. And he sent you copy of memorandums, did he not?

A. I don't think so.

Q. You don't think so?

A. He may have, but if he did I, having attended the conference, at that time didn't read them because they were very long.

Q. Didn't he consult you quite frequently in regard to the subject-matter of these memoranda?

A. I don't——

Q. Would you say he never consulted you in regard to them?

A. No; if he found it advisable to consult me, he probably did.

Q. If he consulted you, of course, you told him your recollection of what happened at the conference?

A. I probably did; I don't remember.

Q. You saw last night a number of memorandums Mr. Herbert Knox Smith wrote?

A. I attempted to start to read them but didn't finish them. They were too long.

Q. Mr. Herbert Knox Smith would attend a conference at which you were present with others and then later on make a memorandum of what happened?

A. He did at most conferences.

Q. Wasn't that part of his job?

A. I would have said that was a matter up to him.

Q. You had a very high regard for Mr. Herbert Knox Smith's ability?

[fol. 1309] A. Exceptionally high regard.

Q. He was a very capable man?

A. Very able.

Q. A man of very good memory?

A. I don't know about his memory. He was a very able man.

Q. He was a well-known lawyer, was he not?

A. Yes.

Q. He had been Commissioner of Corporations at one time?

A. Correct.

Q. Of the United States Government?

A. Correct.

Q. Did your Company—Hartford-Fairmont Company—at any time contemplate going into the glass manufacturing business as distinct from the business you were in, namely licensing automatic equipment?

A. I don't think we ever seriously contemplated it.

Q. You say you don't think you ever seriously contemplated it? Did you ever contemplate it?

A. Not as a corporate policy. It has been discussed off and on sometimes.

Q. I would like to go back a little. When is your recollection of the first time you ever discussed among yourselves, the executive officers, of Hartford-Fairmont, the matter of going into the manufacture of glass?

A. I haven't the least idea.

Q. You did say, though, you discussed it from time to time?

A. Not officially, not as a corporate policy.

[fol. 1310] Q. Would you say you never discussed it at a meeting of the directors?

A. Never seriously, that I can remember.

Q. I dont' know what the word "seriously" means. Did you ever discuss it?

A. I think perhaps several times during the long period.

Q. I am directing myself to Hartford-Fairmont, prior to the organization of the Hartford-Empire Company.

A. Well, I don't remember, Mr. Isseks.

Q. You knew, did you not, in 1920 and '21 and the early part of '22, that the Owens company, manufacturing suction automatic machinery, was in both lines of businesses?

A. What do you mean by that?

Q. You knew that Owens started as an automatic machine company and not in the glassware business, and went into the glassware business?

A. Yes.

Q. You knew of the progress they were making in both lines of business?

A. I had no more information than what everybody had, of their progress.

Q. But you knew what they were doing?

A. Yes.

Q. And you people, board of directors, as well as yourself, knew of the business of the Owens Company both in automatic machinery and in glassware?

A. Well, I knew nothing in detail about their business except they were — strong, prosperous, well-managed company.

[fol. 1311] Q. Now, in your negotiation with Corning and Empire Machine, did the matter of the Hartford-Empire Company, when organized, come up for discussion with a view to whether or not that company should go into the glassware business?

A. I just don't remember, Mr. Isseks.

Q. Now, wait, and we will see if we can refresh your recollection. Don't you remember that the Corning people took the position that Hartford-Empire never should go into the glassware business?

A. No, I don't remember that.

Q. Don't you remember Mr. Falck, who was an executive of Corning, and also a lawyer, took the position that Hartford-Empire Company, when organized, should not be permitted by its charter to go into the glassware business?

A. No, I don't remember that.

Q. See if I can refresh your recollection. I show you a document dated February 21, 1921, which purports to be written by general counsel, Herbert Knox Smith, of Hartford-Fairmont Company, to Mr. Halsey Sayles, learned counsel for Corning, which is marked for convenience Government Exhibit 15. I hand you this document and ask you if you would be kind enough to read that; before I ask you that question, did you read it last night?

A. No.

Q. I ask you to read it, and after you read it I will ask you some questions. (After slight pause): Have you read it?

A. I have.

Q. You note the document is signed by "General Coun-
[fol. 1312] sel," is that right?

A. It is not signed.

Q. I mean it has typed on it "General Counsel"?

A. Yes.

Q. And it has the initials on the left-hand side "H. K. S."?

A. That's correct.

Q. There is not any doubt in your mind that was by Mr. Herbert Knox Smith?

A. No.

Q. He was general counsel of your company?

A. Yes.

Q. You will also note there is a stamp showing it is from the files of Hartford-Empire Company, or at least has that printed on it, and the name of your present secretary, Mr. Safford?

A. Correct.

Q. So that it came to me from your file?

A. Correct.

Q. It was written in 1921. Did you get a copy of the document?

A. I would say no.

Q. Would you say flatly "no"?

A. I don't think I did.

Q. Suppose I found a copy showing that you did get a copy, would you still say you didn't get one?

A. I don't think I did.

Q. Do you have any recollection of conferring with Mr. Herbert Knox Smith before this letter was sent?

By Mr. Haight:

I object. This is not cross-examination. I ask the previ-
[fol. 1313] ous questions and answers be read.

(Read by reporter.)

Mr. Haight: Even if it were cross-examination it wouldn't be proper. He says, "Suppose I should show you such a copy," whether he would say so.

The Court: The witness has answered the question; the answer was no.

Mr. Isseks: And my next question was whether you have any recollection of conferring with Mr. Herbert Knox Smith before he sent this letter.

A. None whatever. This letter has to do with details of a legal contract being drawn between the two parties.

Q. I call your attention to the last paragraph of the letter. See if that refreshes your recollection: "I suspect that you and Mr. Falck and Goodwin"—that is the gentleman sitting over there, Mr. Falck, one of the defendants in the case, is he not?

A. Yes.

Q. And was then an officer of Corning, an executive—is that right?

A. Yes.

Q. And he says "and Goodwin"—that meant you, did it not——

A. That is correct.

Q. —"and I will have to get together personally before we can arrive at some of these things, and as soon as you are ready for any such conference let me know." Does that refresh your recollection that Mr. Herbert Knox Smith

[fol. 1314] talked to you about this document before he sent it to Mr. Sayles?

A. No.

Q. Does it refresh your recollection that he talked to you about it after he sent the letter?

A. No.

Q. See if I can refresh your recollection: Mr. Herbert Knox Smith, in addition to being a prolific writer of memorandums, was also a man who kept a diary?

Mr. Haight: I object to that. It is not proper, it seems to me, to refer to him as "a prolific writer of memorandums."

By Mr. Isseks:

I will withdraw it, and I will put another question.

Q. Mr. Herbert Knox Smith kept a diary?

A. So I understand.

Q. Your understanding is based on conversation with Mr. Herbert Knox Smith?

A. No, it is what I have been told. I never read or saw any of his diaries.

Q. When did you first find out Mr. Herbert Knox Smith kept a diary?

A. I cannot tell you.

Q. At least I am entitled to have some idea.

A. I don't know.

Q. Did you find it out more than five years ago?

A. I couldn't tell you.

Q. Did you find it out more than 10 years ago?

A. I just have no recollection.

[fol. 1315] Q. You have known it for some time?

A. Yes.

Q. Now, I have the original of what purports to be Mr. Herbert Knox Smith's diary. Unless counsel for the defendants ask me to mark it, I am not going to mark it, but I am going to ask my questions to see if I can refresh your recollection. It is rather voluminous.

By Mr. Haight:

Are you going to read from it?

By Mr. Isseks:

No, I am going to use it for the purpose of refreshing his recollection.

Mr. Haight: I will object if you are going to read it.

Q. I hand you what was given to us last night, what purports to be Mr. Herbert Knox Smith's diary; this first part seems to be pertaining to 1921, and direct your attention to an entry marked February 24th. It is my understanding 1921. I ask you whether that entry refreshes your recollection that Mr. Herbert Knox Smith conferred with you, Mr. Falck and Mr. Sayles at a place that I don't know of, but the first letter in the name of that place is "W". Does it refresh your recollection that you conferred with him about the subject-matter of the letter which is Government Exhibit 15?

By Mr. Haight:

I am going to ask Your Honor to admonish the witness to this extent, as to what I understand are the rules of law regarding the uses of documents of other persons, to refresh his recollection. If by looking at the paper he has no independent recollection and he did not see the paper at or [fol. 1316] shortly after the time the entry was made therein, he may not testify as to what appears in there simply because it does appear in there; he must have a recollection.

The Court: I think the document has been submitted to him for that purpose.

By Mr. Isseks:

Only for that purpose.

The Court: To refresh his recollection, whether he has a recollection.

Mr. Haight: I don't care about this particular question, but it is coming up and coming up and coming up, and I never admonish a witness because I prefer to have Your Honor do so, as to what should be done.

The Court: Of course, the question refers to what recollection he has, if any.

(End of previous question read: "Does it refresh your recollection that you conferred with him about the subject-matter of the letter which is Government Exhibit 15?")

The Witness: (A. No, it merely refreshes my recollection that Mr. Knox Smith and myself did meet Mr. Falck and Mr. Sayles after this letter was written. And the last paragraph of this letter says: "I suspect that you and Mr. Falck and Goodwin and I will have to get together personally before we can arrive at some of these things, and as soon as you are ready for any such conference let me know." This merely tells me a conference took place shortly afterward.

Q. See if I can help refresh your recollection. Mr. Knox Smith had a place, a country place at a town which begins [fol. 1317] with "W"; where is that?

A. No, Knox lived in Farmington.

Q. I want to find out where this meeting took place, if I can. Did the country home have a name?

A. Yes.

Q. What was the name of that place?

A. Westover or——

Q. Beg pardon.

A. Westwood or Westover.

Q. That is right. Now do you have any recollection of attending a conference at Mr. Knox Smith's country place some time after February 19th, and specifically on or about February 24th?

A. No.

Q. With Mr. Falck and Mr. Sayles?

A. No.

Q. Beg pardon?

A. I have no recollection of where the conference took place.

Q. Do you have a recollection that you talked with these three gentlemen about the various matters set forth in the letter of February 19, 1921, namely, the setup of the proposed new Hartford-Empire Company?

A. I say I assume we did. I attended the meeting, it is perfectly apparent.

Q. I am asking you whether you have any recollection.

A. No.

Q. Do you have any recollection of a discussion with these gentlemen in regard to a suggestion made by Mr.

[fol. 1318] Falck that there be stricken from the corporate purposes of Hartford-Empire Company, the words: "to manufacture and sell glass"?

A. I have no recollection.

Mr. Sayles: I object to that, if Your Honor please, on the ground it is not within the pleadings. There is no allegation anywhere in the pleadings that Hartford kept out of the glass business on account of anything. That is not within the pleadings.

Mr. Isseks: It is our purpose to show that Corning, that was in the glass business, was anxious to keep out this manufacturing company from the glass business, and first when they tried to prevent them from manufacturing at all and then there was a compromise provision they couldn't go into the manufacture of glass unless all the directors agreed or unless 65% of the stockholders agreed.

The Court: Even though there be no allegation in the pleadings to that effect, I think it may be admitted as part of the general picture, if there is such a picture.

Mr. Sayles: Exception.

Q. Don't you have any recollection that Mr. Falck wanted to prevent your new company, the Hartford-Empire Company, from ever manufacturing glass?

A. No.

Q. You did know, didn't you, at the time of this conference, that there was going to be a provision put in that the only way you could manufacture glass, the Hartford-Empire Company, was upon consent of 65% of the stockholders of the company?

[fol. 1319] A. That was in that final agreement, so I must have known about it then.

Q. I am not talking about the final agreement, I am talking about the conference preceding the final agreement.

A. I have no recollection.

Q. Would you say you never heard of it before these things took place?

A. No, having read this letter, it must have been discussed.

Q. Must have been discussed with you?

By Mr. Sayles: I move that go out.

The Court: Yes, the latter part may go out, that "it must have been discussed".

Q. Do you have any recollection of discussing the matter of your company's right to manufacture glass before the agreement was made?

A. I have no recollection.

Q. Would you say that you never discussed it?

A. No.

Q. But you knew, did you not, as early as February, 1921, that part of the deal resulting in the Hartford-Empire Company would be that Empire Machine Company was to receive a little over 40% of the stock of the new company?

A. What date was that?

Q. February, 1921.

A. Well, there had been many discussions as to how the stock should be divided. As to whether anything had been definitely settled at that time, I wouldn't remember, as to just the proportion that was talked to that time, in February.

[fol. 1320] Q. What did they finally arrive at?

A. They finally arrived at 55 and 45.

Q. Who got the 55 and who got the 45?

A. Hartford-Fairmont got 55 and the Empire—Empire Machine Company got 45.

Q. It was also part of the arrangement, was it not, that Empire Machine would receive, or would have the right to appoint members on the board of directors of the new company?

A. I think so.

* * * * * * *

[fol. 1321] Q. Did you have any conferences prior to the final deal at which you discussed the matter of when the new company could go into the manufacture of glassware?

A. Mr. Isseks, I told you that I don't remember any discussion about this particular subject. We had a lot of meetings. There were a lot of questions that we discussed, the divisions, what kind of company should be formed, the bylaws, and so on, and then the final agreement; so it is a matter of record in the Formation Agreement.

Q. I understand, but I am trying to find out what happened before. You gentlemen weren't going to put into the agreement the reason you couldn't go into the manufacture of glassware was because you were going into competition with Corning?

Mr. Haight: I object to that.

The Court: Yes, that may go out.

Q. My last question is whether you recall any discussion as to when your company could go into the manufacture of glassware?

A. No, I don't recall that particular subject.

Q. Don't you recall having conversations with Mr. Herbert Knox Smith, in which he said there were no reasons for any restriction of the new Hartford-Empire Company because Corning would have exclusive rights, anyway, and Hartford-Empire couldn't manufacture in competition, in any event, in the Corning field?

A. I cannot recall that, Mr. Isseks.

[fol. 1322] Q. I want to see if I can refresh your recollection. I show you a letter which I will have marked Government's Exhibit 15 for identification, and ask you to look at the paragraph numbered one on the first page, and I want to see if that refreshes your recollection that you were told some time in February, 1921, by Mr. Herbert Knox Smith that Mr. Falck had originally suggested that there be stricken out of the corporate purposes of the Hartford-Empire Company, the words "to manufacture and sell glass"?

A. What is the question?

Q. My question is whether that refreshes your recollection he told you that in 1921, in February?

By Mr. Haight: I object to that because it doesn't seem to me what Mr. Smith had told him Mr. Falck had said is evidential. That is hearsay of the most flagrant kind.

* * * * * * *

[fol. 1323] The Court: Objection will be overruled. The answer will be noted.

The Witness: Perhaps I don't understand this. I have no recollection of having seen this letter. I have no recollection of any conference between Herbert Smith and myself in regard to this letter. Whatever the final agreement stated as regards the right of the Hartford-Empire Company to go into the glass business must have been considered sometime by all of us before that agreement was made, but I just can't tell you about what happened in February, Mr. Isseks, or what happened in April, or what happened in January, because I have no recollection.

Q. That is all right, but my question is another question. At any time before the final agreement was made, did you have any discussion with Mr. Herbert Knox Smith or Mr. Falck or Mr. Sayles, or any of them, with regard to under what circumstances your company would manufacture glassware?

A. Well, I don't remember them, but I assume we did, otherwise it would not be in the agreement.

Q. Do you have any recollection of any conversations with any of those gentlemen as to why any provision was put in the final arrangement, relating to the circumstances under which your company could manufacture glassware?

A. No.

The Court: We will suspend at this time.

(Short recess.)

[fol. 1324] (Recess).

Q. Mr. Smith, will you look at paragraph No. 8 at Page 2, of this memorandum and see the last two sentences and see if that does not refresh your recollection that it was contemplated that all the routine—executive policies of the new company Hartford-Empire was to be handled by you and Mr. Herbert Knox Smith?

A. That is what this says.

Q. I am asking your recollection?

A. Mr. Isseks, I said I do not remember this letter. Now this letter to Mr. Sayles proposes that Mr. R. Arkell be president and Mr. Heintzelman be vice president and that routine executive powers have got to be handled by Goodwin Smith—Herbert Knox Smith and myself. I think that is probably correct.

Q. Mr. Smith, I believe you testified that Mr. Knox Smith was general counsel?

A. Yes. In 1922.

Q. Was he in charge of the negotiations as the legal representative of Hartford-Fairmont Company which led up finally to the Hartford-Empire agreement?

A. I don't know what you mean by it. I would say he was a very important factor and attended to a lot of the legal documents and drew the papers and attended to the legal details.

[fol. 1325] Mr. Isseks: Your Honor, I offer in evidence Government's Exhibit 15.

Mr. Haight: I object. It was offered to the witness to refresh his recollection and can only be used for that purpose.

The Court: I think I will sustain the objection.

Mr. Isseks: Your Honor, may we be heard?

The Court: Yes.

* * * * * * *

[fols. 1326-1336] Mr. Isseks: Your Honor, before making renewal of formal offer of proof I would like to offer at this time the so-called formation agreement of Hartford-Empire, a printed document which was given to the Government some time ago by the defendants and I will show it to the witness and it may be identified as being one of the offered copies of the formation agreement October 6, 1922.

Q. I will ask the witness if that is a copy of the original agreement?

Mr. Isseks: I am not offering the final contract between Corning, Empire Machine and Hartford. I have a photostatic copy of the final contract. This precedes it.

Q. I would like to ask the witness if that is a copy that comes from their files?

A. I think it is.

Mr. Isseks: We would like to have it marked in evidence [fols. 1337-1339] as the next exhibit, Exhibit 16.

Mr. Haight: What is offered?

Mr. Isseks: Everything that is in the book, formation of Hartford-Empire. It has attached to it signatures, as an exhibit schedule A, certificate of incorporation of Hartford Empire Company, including by-laws. Then it has certain pieces of paper. Then it has a report of minutes. I am offering only the original contract. Then there is Schedule B, Schedule C, and Schedule D and Schedule E. I intend later on to offer a photostatic copy but I am offering now the formation agreement with exhibits attached thereto.

* * * * * * *

[fols. 1340-1342] Mr. Isseks: Your Honor, this document is now in evidence as Exhibit 16, and I would like to refer to two paragraphs.

Mr. Fess: We make objection to Exhibit No. 16.

The Court: The objection will be overruled as to Exhibit 16. It may be admitted.

* * * * * * *

[fol. 1343] Q. In connection with these negotiations leading up to this 1922 contract, did you have any correspondence with Mr. Falck with regard to rights of Hartford-Fairmont to grant a license in certain fields of ware?

A. Could you be a little more specific.

[fol. 1344] Q. Especially I show you a document which has been marked for convenience Government's Exhibit 17, coming from the files, as we understand it, of Corning Glass Works. The originals were not produced by your company. I understand it purports to be a letter written by Mr. Falck to you and I ask you if you recall receiving the original of that letter?

A. I received that letter, Mr. Isseks.

Q. Now, have you any recollection of having any conversations with Mr. Herbert Knox Smith with regard to replying to that letter?

A. No.

Q. Beg pardon?

A. No.

Q. You do not have any recollection of replying to the letter yourself, do you?

A. That I can't tell you, Mr. Isseks. The letter was probably answered by myself and Mr. Knox Smith.

Q. I show you what purports to be a true copy, certified here as true by the defendant Corning Glass Works of a letter dated February 21, 1922, from Herbert Knox Smith to Mr. Falck and I ask you whether you had any conversations with Mr. Herbert Knox Smith after looking at this letter which is Government's Exhibit 18 for convenience, whether you had any conversations with Mr. Herbert Knox Smith in regard to the exhibit marked Government's Exhibit 17?

[fol. 1345] A. I think probably I turned this letter received from Mr. Falck over to Mr. Knox Smith to answer because it involved contract and legal points.

Q. And you asked him, to your best recollection, to reply to the letter?

A. That is right.

Mr. Isseks: I offer both documents in evidence.

The Court: They may be admitted.

Mr. Middleton: I understand, Your Honor, there is an objection to each of these exhibits?

The Court: Certainly.

Mr. Isseks: Your Honor has read them, have you not?

The Court: Yes.

Mr. Isseks: I do not want to take time to read them unless some counsel wants me to.

Mr. Day: Was Mr. Falck counsel for Corning at the time that was written?

Mr. Isseks: I will ask the witness.

Q. Was he?

A. I think Mr. Falck was an officer of Corning.

Q. He was vice president at the time?

A. Well, an officer. I don't know.

Q. Mr. Sayles was the man you were dealing with as counsel?

A. Mr. Sayles was counsel for Corning Glass Works and [fol. 1346] Empire Machine Company.

Q. I will hand you a contract October 6, 1922, and it has in front of it a letter dated March 28, 1924, from Corning Glass Works to Hartford-Empire signed by Falck as president to Mr. Goodwin Smith as vice president. The original contract here is signed by Corning Glass Works, by Falck, Empire-Machine by Mr. Falck and Hartford-Empire by Mr. Smith and ask you by looking at these signatures whether that is a photostatic copy of the final contract?

A. I would think it was. Of course I haven't read it over.

Q. I mean will you identify the signature on the back?

A. That is my signature.

Q. In both places, under the Hartford-Empire Company?

A. Yes.

Q. And here?

A. Yes.

Mr. Haight: Is that the 1922 contract?

Mr. Isseks: Yes.

The Court: Is this Exhibit 19?

Mr. Isseks: Yes.

Counsel: Your Honor, do we understand these are all going in subject to objection?

The Court: Yes.

Mr. Isseks: I would like to summarize the formation [fol. 1347] agreement.

(Reading excerpts from formation agreement.)

Mr. Haight: I understand this is done for Your Honor's information?

Mr. Isseks: Yes.

Mr. Haight: There may be time when we feel there should be some correction, but we won't take the Court's time now.

Q. Now, Mr. Smith,—I am going to a different subject now. I want to ask you whether you recall any conferences that you attended at any time from 1915 to 1920, with anyone from the then Owens Company with regard to any proposed arrangement with Hartford-Fairmont Company and the Owens Company?

A. There were several conferences with the Owens Company, officers of the Owens Company, I think some time in '18, just after they had been unsuccessful in their suit against the Hartford-Fairmont Company.

Q. Do you remember where this conference took place?

A. In New York City.

Q. Do you remember who was present, sir?

A. No, not entirely. Mr. Libbey was present. I think in the first early days there was Mr. Brown who was president of the Owens Company. Mr. Schmettau who was attorney, and at some other conference I think Mr. Biggers was present.

Q. Was Mr. Owens present?

[fol. 1348] A. In the early conference?

Q. I am talking about the early conference. I am not talking about the conferences which began sometime in 1921. I am talking about the conferences in 1918, and 1919?

A. I don't happen to remember as to any early conference 1918, whether Mr. Owens was there.

Q. You say Mr. Biggers was there?

A. Yes, as I remember.

Q. Was Mr. Blair there?

A. I don't think so.

Q. Who was there on behalf of your company Hartford-Fairmont?

A. Mr. Honiss I think and Mr. Heintzelman attended some of the early conferences.

Q. Mr. Herbert Knox Smith?

A. If you can tell me the date when these took place I can tell you because Mr. Herbert Knox Smith was in the Army in '17 and '18. I don't remember him being present.

Q. Was Mr. Cunningham present?

A. I think Mr. Cunningham and Heintzelman.

Q. Tell us what happened. You say it was in New York?

A. Yes. That is the way I remember.

Q. Where abouts?

A. One I think was at the Biltmore and one at the Belmont.

Q. The old Belmont, it isn't there anymore?

[fol. 1349] A. No.

Q. Tell me what happened?

A. I don't know which conference you refer to.

Q. Take the first one. I wasn't there I am sure.

A. If you can give me a lead as to what happened——

Q. Now, I want you to tell us which one was first, the Biltmore or the Belmont?

A. I believe the Biltmore, I don't know.

Q. All right. Tell us what happened?

A. There was a question whether the Hartford-Fairmont Company should decide to sell their company and if so——

Q. Who raised the question?

A. I don't know. You mean what individual?

Q. Did it come from Owens or did it come from you?

A. I think it came from them.

Q. Do you remember who made the request?

A. No.

Q. Was it Mr. Libbey?

A. I can't tell you.

Q. Was Mr. Walbridge there?

A. I don't know.

Q. Tell us what the Owens people said?

A. I told you there was the conference. All I remember about it is we met and the question came up and it was asked whether we wished to sell the stock of the Hartford-Fairmont Company.

[fol. 1350] Q. What did you gentlemen say?

A. I think the question was, we asked them what they considered they could afford to pay.

Q. A perfectly fair question. What did they say?

A. I think the answer to that was that they pay us about the same amount of money we had already expended and invested in the company.

Q. How much was that?

A. I don't remember just at that time.

Q. Was there any figure mentioned at all?

A. You could help me, Mr. Isaks, if you could get me clear. Whether I am trying to tell you about the first conference or second conference.

Q. Was there any figure mentioned at either conference?

A. The first approach I think to the question was whether we wished to sell for the amount of money we already had in it and the answer to that was no.

Q. Then was there another conference?

A. Then sometime after that a conference took place as to whether we wished to sell the company and if you are referring to the same conference I am, which I am not clear on, Hartford said they would put a price of two million five hundred thousand dollars.

Q. Who put that price?

A. Hartford. And the Owens Company offered, I think, [fol. 1351] two million dollars.

Q. What happened?

A. We declined that offer.

Q. Were there more than two conferences to your best recollection?

A. As far as '17, '18 and '19, that is as far as I know.

Q. Was anything said by these Owens people as to why they wanted to buy out Hartford-Fairmont?

A. I don't remember.

The Court: You may suspend at this time.

(Noon recess.)

[fol. 1352] (At 2 o'clock p. m., Tuesday, March 4, 1941, the trial was resumed.)

Q. Now, Mr. Smith, after the negotiations in the years 1918 and 1919 there were subsequent negotiations, were there not, with the Owens people?

A. That is correct.

Q. Can you place the next negotiations after the ones as to which you have already testified?

A. I think it is the latter part of '21 and '22.

Q. And who on behalf of your company participated in those negotiations?

Mr. Sayles: May I object, if Your Honor please; it is not binding on Corning or the Empire group. I object to this line of testimony.

The Court: Well, that is understood, it is not binding on any except the parties concerned in them, and unless a conspiracy has been shown.

By Mr. Sayles: Then there is no need of making any objection.

Mr. Isseks: Does Your Honor care to hear argument that we have demonstrated already there has been a conspiracy between Corning and Empire and Hartford and Empire, or do you want us to make that argument at some other time? The contract of 1922 which we offered will demonstrate that.

The Court: You can make that at some other time.

The record may show objections are made.

Q. The question was who, on behalf of your company, participated in these negotiations that you told us about in 1921?

[fol. 1353] A. Mr. Knox Smith and myself.

Q. Anybody else?

A. Some of the conferences, I think, were attended by somebody else, perhaps one or two. I think our general patent attorney, Mr. Bartlett, attended some.

Q. Anybody else?

A. Not that I remember.

Q. Who participated on behalf of the Owens people?

A. I think Mr. Blair and Mr. Owens were at some conferences, Mr. Biggers was at some conferences.

Q. Anybody else?

A. Don't remember them.

Q. Now, in connection with these conferences, did you make any memorandum of what took place?

A. I didn't; no.

Q. Are you sure you didn't?

A. I don't remember myself making the memorandum.

Q. Did you make any memorandum of the problems that were up so far as your people were concerned in determin-

ing whether or not they should continue the negotiations, or go forward with them?

A. I don't know just what you mean by my making memorandum.

Q. Did you put down in writing?

A. When I came back from the conferences I didn't put down in writing what went on.

Q. Did you have any conversations with Mr. Knox Smith after these various conferences as to his making a memorandum of what took place?

[fol. 1354] A. I knew that he did make memorandums.

Q. And your knowledge in that connection came about in what manner?

A. Well, that is just what he always did.

Q. Didn't he on some occasions tell you he was writing a memorandum of what took place?

A. I think I knew that generally, that he did that.

Q. Did he ask you, after some of the conferences, as to your recollection as to what took place at the conferences?

A. I don't remember.

Q. I hand you a document which has been marked for convenience Government Exhibit No. 20, and which is dated February 13, 1922, and has a stamp on the face of it "Received William H. Honiss February 15, 1922", and has at the end thereof, in the left-hand corner, "F. G. S.-A.", and ask you whether you wrote that document? It has on the top of it, to distinguish from another document of the same date, "Suction Feed vs. Gob Feed. Owens vs. Hartford."

Mr. Middleton: May I inquire as to what initials you refer to?

Mr. Isseks: In the lower left-hand corner, at the end of page 3.

A. I did.

Mr. Isseks: I offer this in evidence, Your Honor.

Mr. Middleton: Objection, Your Honor, to this exhibit, on behalf of Owens-Illinois.

The Court: The objection will be overruled. It may be [fol. 1355] received.

* * * * * * *

Q. Now, this memorandum which was Government Exhibit 20, was written by you, according to its date February 13, 1922; Mr. Smith, you recall, do you not, that prior there-

to you were engaged in negotiations with the people representing Owens, whose names you gave before?

A. Just as I testified.

Q. Don't you also recall that even as early as the begin- [fol. 1356] ning of 1921 there were conversations had by you with people with regard to working something out with Owens people?

A. I don't recall any specific case.

Q. That is all right, it is my job to see if I can refresh your recollection. Don't you remember in the early part of 1921 Mr. Mandeville, who is now chairman of the board—I don't mean the Mr. Mandeville who is in the court room but I mean his father, the man who was chairman of the board of directors of Thatcher Manufacturing Company—came to you and had a conversation with you with regard to working something out between Hartford-Fairmont and Owens?

A. I think he did. I cannot tell you just when.

Q. I hand you a document which is marked Government Exhibit -1, for convenience, which is dated February 15, 1921, and purports to be a letter sent by you to Mr. Ashcraft, and I ask you whether you wrote that letter?

A. After witness examines same.) I wrote that letter.

By Mr. Isseks: I offer that in evidence, Your Honor.

By the Court: It may be admitted.

By Mr. Middleton: Objection, Your Honor, and I call your attention to the fact that this is a lettter written, not to anyone in the Owens-Illinois Company. I trust the Court has in mind that the Illinois Company is out of existence.

By the Court: The Court has that in mind.

Q. Now, Mr. Smith, before I leave that document, can I call your attention to the fact that at the bottom of the page, you sent copies to Mr. Arkell, Mr. Cunningham and [fol. 1357] Mr. Honiss; is that right?

A. It so states.

Q. Mr. Arkell was the president of your company, was he not?

A. He was.

Q. Mr. Cunningham was a director?

A. He was.

Q. Mr. Honiss was one of its representatives, you said yesterday, who was a patent solicitor?

A. Correct.

Q. The memorandum which is Government's Exhibit 20 is dated February 13, 1922, and the letter which is Government's Exhibit 21 is dated February 15, 1921. I ask you if you recall that in the interval between those dates, the early part of February, '21 and February '22, you attended various conferences with people connected with the Owens group.

A. I think I attended at least two or three conferences.

Q. Do you recall a conference in November, 1921, at which were present yourself, Mr. Bartlett, you mentioned—whom you said was your patent lawyer—and Mr. Herbert Knox Smith and Mr. Ashcraft?

A. I think there was such a conference.

Q. The conference was at the Belmont Hotel in November, was it not?

A. I couldn't say.

Q. What is your present recollection of what took place at that conference?

A. Well, I think Mr. Ashcraft was disturbed about the general patent situation and wished some more definite advice than had been given about what we felt our patent [fol. 1358] situation was, because so many people were in interference with various types of suspended gob feeding that we said we didn't want to impose on him but asked that we meet him, and have our patent attorney, Mr. Bartlett, attend the meeting.

Q. Do you recall that the matter of working something out with Owens was discussed at an executive committee meeting of your company on November 2, 1921, at which were present Messrs. Herbert Knox Smith, Honiss, yourself, Cunningham, Arkell, Dorsey and Bartlett?

A. I don't happen to remember the meeting.

Q. I show you, for the purpose of refreshing your recollection, the Knox Smith diary for November 2, 1921, and see if that does not refresh your recollection?

A. There was such a meeting, I believe, now that I have read that.

Q. You mean executive committee meeting?

A. No, that wasn't an executive committee meeting, that was a meeting in the office.

Q. I am asking you now whether you recall about the meeting with Mr. Ashcraft and your executive committee decided that if something should be done about getting to-

gether with Owens it should be done by beginning through Ashcraft.

A. I don't recall that.

Q. The purpose of my question is to ask you to look at this notation in Mr. Knox Smith's handwriting, particularly the end thereof, and ask you whether or not that does not refresh your recollection as to why and how you went about doing this through Mr. Ashcraft?

[fol. 1359] A. Well, this merely says there was a discussion at that conference in regard to these matters. Now as to what form the discussion took or what there was of the discussion, I don't remember.

Q. And it does not refresh your recollection, by looking at this memordanum, the diary, that you were told to go about doing it through Mr. Ashcraft?

A. No, that does not refresh it.

Q. Mr. Ashcraft, you have already testified, was counsel for Illinois Glass Company?

A. That is correct.

Q. Don't you recall that your first conference with regard to any deal with Owens was had with Mr. Ashcraft?

A. I would have to put it the other way. Mr. Ashcraft, being a licensee of the Owens Company and a licensee of Hartford, his company was naturally interested in the progress of Hartford, and what its situation was, and what protection his company was going to get, and those matters were discussed with Mr. Ashcraft.

Q. Do you remember the conference in New York at which Mr. Ashcraft, Mr. Knox Smith, Mr. Bartlett, Mr. Arkell and you were present?

A. I remember there was such a conference.

Q. You remember that after the conference you had some talk with Mr. Knox Smith about a memorandum which he wrote regarding the conference?

A. No.

[fol. 1360] Q. See if I can refresh your recollection. You look at Mr. Knox Smith's diary entry for November 10, 1921, then the next day, November 11, 12, 13 and 14, and see if that does not refresh your recollection.

A. What is the date of the conference?

Q. The conference, I will show you the memorandum in a few minutes, was November 10, 1921, according to the diary memorandum. I want to see if that refreshes your

recollection, that you talked to him about the memorandum he wrote after the conference.

A. Well, this states that several days after the conference Mr. Smith drew a brief memorandum of a partial Owens-H. F. adjustment for me, and then a general discussion of same was had by Mr. Bartlett, Mr. Honiss, Mr. Arkell, Mr. Ernest Smith, Mr. Dorsey and himself, with me.

Q. Does that refresh your recollection?

A. No, not as to what was in the memorandum.

Q. Now, I hand you a photostatic copy of a memorandum, which is undated, but has on the heading, "Memorandum of interview with Messrs. John Bartlett & Edwin Ashcraft, November 10, 1921, Herbert Knox Smith." It is marked for convenience Government's Exhibit 22. I ask you to read it.

A. (Witness complies.)

Q. Have you read it?

A. Yes sir.

Q. Now, having read it, and calling your attention particularly to the paragraph numbered 20, on page 8, I ask you whether you didn't go over with Mr. Herbert Knox [fol. 1361] Smith, this memorandum of the conference of November 10th, 1921, which you gentlemen had?

A. I don't think I went over the whole memorandum.

Q. Did you go over part of the memorandum?

A. If Mr. Smith was in doubt about something that somebody might have said, he probably came and asked me, and that is the reason for #20.

Q. You recall the conference, don't you?

A. I do.

Q. Do you recall at this conference Mr. Ashcraft said he had been to see the Owens people the day before?

A. Yes.

Q. And do you recall that he said something, in substance, that the Owens people wanted to stop litigation on the outside feeder?

A. That is what the paragraph said.

Q. And directing your attention to the second paragraph, under the paragraph #1 of page 1?

A. This merely says——

By Mr. Haight: Don't read what it is. The question is whether or not it refreshes your recollection, as to certain things.

The Witness: A. Well, I don't remember Mr. Ashcraft making that remark.

Q. Did anybody make the remark?

A. I can't tell you.

Q. Was there anything said during the conference about the Owens Company wanting the litigation stopped and the [fol. 1362] outside feeders suppressed?

A. There might have been but I don't remember.

Q. Was there anything that Owens was willing to go a considerable distance for the purpose of stopping litigation and suppressing the outside feeders?

A. I think Mr. Ashcraft did say something purporting to be something like that, that Owens wanted to stop, or prevent, further litigation and large expense. Certainly we did look forward to continued long litigation for a long term of years at very large expense, and nobody knew just where they were coming out. Here had been developed a new art, a very valuable art, a great contribution to the glass industry, the only art which had been developed since the Owens Suction Machine that allowed manufacturers to produce glassware automatically. Now, the minute that art came into being, everybody rushed into the Patent Office and tried to get a look-in on that art, and we were in continual interference in the Office. Gracious, I remember some 17 or 25 different interferences, everybody felt they had contributed something, but we were the originators of that art, and it was never absolutely clear just where we were coming out. Over a period of years the thoughts of our patent attorneys differed from year to year. Sometimes one thing was thought very important, and then it grew less important. And another time something else became more important. And their opinions varied from year to year. So until our patents could come to issue, we never really knew just where we stood.

Q. Was that said at this conference?

[fol. 1363] A. Not all of what I said.

Q. Something was said, though, by someone at the conference, about Owens Company wanting the litigation stopped?

A. That is correct.

Q. And something was said at the conference, was it not, that the Owens Company wanted the outside feeders suppressed?

A. I think we both might have agreed that infringing feeders—there were other feeders that infringed—and I think, naturally, we didn't want infringing feeders to exist, any more than Owens who felt our feeders infringed their rights.

The Court: Mr. Smith, at this conference or conferences, were you there as an officer of Hartford-Fairmont or Hartford-Empire?

The Witness: A. This is 1921. I was there as an officer of the Hartford-Fairmont Company in '21.

The Court: What was the date of the organization of the Hartford-Empire?

The Witness: A. That took place in '22.

* * * * * * *

[fol. 1364] Q. When was Hartford-Fairmont dissolved?

A. After 1922.

Q. Was Hartford-Fairmont ever dissolved?

A. Oh, yes.

Q. Wasn't Hartford-Fairmont merged into a new company called The Hartford-Empire Company?

A. If I remember rightly, it is on the record, but I think the assets of both the Empire Company and the Hartford-Fairmont Company were turned over to the Hartford-Empire Company.

Q. Well, Empire Machine Company had turned over certain assets and continued in existence?

A. They continued to exist, yes.

Q. Did your new company, the Hartford-Empire Company, take over all the assets of the Hartford-Fairmont?

A. As I remember.

Q. Left it a shell?

A. Yes, left it the shell.

Q. You were the successor of all its assets?

A. As I remember it.

Q. That was when?

A. 1922.

Mr. Isseks: Counsel for the Hartford-Fairmont told me [fol. 1365] Hartford-Fairmont was not dissolved until 1925 or '26.

Does Your Honor want to hear our position? It is our position this company is a successor of Hartford-Fairmont and took over all its rights and obligations, and the Hart-

ford-Empire is bound by all the acts of the Hartford-Fairmont, just as the Owens-Illinois, as the successor of all the rights and obligations of The Owens Company. Does the Court wish any more discussion?

By the Court: Proceed.

Q. Don't you remember at this conference Mr. Ashcraft said Owens took the position Owens had everything and your company didn't have anything?

A. I don't recall it. That is what is said in this record made by Mr. Knox Smith for his own records and files. I cannot go back in my memory and remember what was said in 1921.

Q. Mr. Knox Smith maintained files at the Hartford-Fairmont Company?

A. He did.

Q. And those files were turned over to the Hartford-Empire Company?

A. That is right.

Q. That is how we obtained these documents?

A. Yes.

Q. They were taken from the files of the Hartford-Empire Company?

A. Well, the same files were continuous.

Q. There was no segregation in the files; it was all the [fol. 1366] same company?

A. There was no segregation of the files. It was a new company.

Q. Don't you remember at the conference after something was said to the effect that Mr. Owens took the position your company had nothing, that you and Mr. Bartlett, as distinguished from your president, Bartlett Arkell,—two different people, one is a lawyer and the other is a businessman, head of the Beech-Nut Company—is that correct?

A. Correct.

Q. Is Mr. Bartlett still alive?

A. He is.

Q. Along in years?

A. 82 years old.

Mr. Haight: A mere chicken.

Q. Don't you remember at this conference that you and your counsel, Mr. Bartlett, said that it wasn't so, but that

your company had made considerable progress since the earlier negotiations in connection with patent applications?

A. Well, I don't actually remember saying it, but I think I would say it, Mr. Isseks, because I always felt we had something.

Q. Don't you remember at this conference that your representative stated that if no agreement were reached between your company and Owens, you would have to intervene in any suit brought by Owens on the Lott Patent against any outsider?

A. I think that would be a natural conclusion. I do not remember the details of the discussion.

[fol. 1367] Q. Don't you remember that someone in your group said that the question of suppressing outside feeders was not simply a question as to whether Owens can do it alone or with our help, but a question whether Owens can do it against us as compared with having our active assistance?

A. I would not know. If that purports to be in this book, I would say I cannot tell you, because I just can't remember the conversation.

Q. Don't you remember someone in your group said you didn't believe there was much chance of Owens' being able to suppress the outside feeders, when your company was on the other side of the fight, while your group felt there was a great preponderance of chance, that the two of us together could do it, suppress the outside feeders; do you remember that? You are shaking your head, I don't know which way.

A. Well, I don't remember it.

Q. You wouldn't say it didn't take place?

A. No, I could not, because here is a memorandum purporting to cover a lot of conversation which I don't personally remember.

Q. Don't you remember also Mr. Knox Smith's stating at the conference that even if the impossible should happen and Owens could stop the whole business of Hartford-Fairmont by patent litigation, that would not give Owens the right to use the gob feed because while they would stop your company, you certainly had enough to stop them from using it, and the result simply would be a deadlock as far as any constructive question was concerned. Don't you [fol. 1368] remember Mr. Knox Smith saying that, in substance?

A. No.

Q. You wouldn't say it didn't take place?

A. No, I wouldn't say it didn't take place.

Q. Don't you remember that Mr. Ashcraft reported that unless you people got together with Owens, Owens would have to litigate with you for the next 25 years, not out of malice but that they would have to do it in self-defense?

A. I make the same reply, Mr. Isseks.

Q. Are you going to make the same reply to every question I ask?

A. Well, I don't know.

Q. All right, I am sorry. Don't you remember that Mr. Ashcraft pointed out that he, representing the Illinois Glass Company, would like to see that result, because your company would put Owens out of business and then Illinois Glass could buy them for junk?

A. No, that I don't remember.

Q. Do you say that it could not have happened?

A. No, I don't say it could not have happened.

Q. Don't you remember Mr. Ashcraft's remark at this conference Owens was 90% manufacturing, and up to 1920 Illinois Glass had paid royalties to Owens on every bottle they made and in 1921 they had made 3,000,000 on your machines, with the result Owens didn't get any royalties from those?

A. No, but it would be perfectly true, that on ware made on our machines by the Illinois Glass Company, royalties would be paid to us, Owens naturally wouldn't get that royalty.

[fol. 1369] Q. Do you remember that taking place at the conference?

A. No, I have entirely forgotten the 90%. I do rather indistinctly remember Mr. Ashcraft's referring to the fact that Owens Company was mostly a manufacturing company.

Q. Don't you remember Mr. Ashcraft made the statement that if Owens sued on the Lott Patent and your company was brought in, that that would involve, necessarily, the Illinois Glass Company and they would go on your side?

A. No, I don't remember that.

Q. Now, you testified earlier today that Mr. Knox Smith made a lot of memorandums, kept very complete records, and he wrote memoranda of conferences, did he not?

A. Yes, he did.

Q. Am I correct in my recollection of your testimony, you say he occasionally conferred with you about a detail of a conference that took place?

A. I think he would; it would be the natural thing for him to do, if there was something he wasn't sure of he might come in the next day and ask me about that one point.

Q. Do you remember this particular conference with Mr. Ashcraft and Mr. Knox Smith and Mr. Bartlett?

A. I remember I was there.

By Mr. Isseks: I offer the document in evidence.

Mr. Haight: We object, if your Honor please, for the same reasons we objected this morning, in respect to the letter. And there is an additional reason why, because it is not shown, and the fact is to the contrary, that this was not made in furtherance of or as a part of Mr. Knox Smith's [fol. 1370] duties. He made, according to the testimony, some private memoranda which went into the files of the company, but, as Your Honor knows, on this matter of admission by either officers or others connected with the corporation, he is amenable to the rule of agency, and he must be acting within the scope of the duties assigned to him at the time he does it. I merely state that as another reason, and we ask that it be disposed of after these briefs are filed that we spoke of this morning.

Mr. Isseks: That is perfectly all right.

The Court: It is all the same proposition.

Mr. Isseks: Except I don't want to argue as to whether this witness was present at the conference. I think the witness has admitted that, and he went further and stated he was consulted by Mr. Knox Smith. I think the suggestion of counsel for Hartford is very helpful to the Government. I would like to submit memorandum covering a number of documents.

Mr. Middleton: May we add the objections of Owens-Illinois, for the further reason that this memorandum is obviously hearsay. If the gentleman who drew this memorandum were on the stand he would not be permitted to testify in the manner in which this memorandum is written. He is very largely jotting down what Mr. Ashcraft, of the Illinois Company told him had been said or done by another company, to-wit, the Owens Company; Simon-Pure hearsay. Whenever he makes a statement as to the Owens attitude, the old Owens Company, it is what Mr. Ashcraft of the Illi-

nois Company had told Mr. Smith that somebody in Owens [fol. 1371] had said or done. Now, we think this is very clearly inadmissible upon that ground, in addition to the grounds urged by the attorney for Hartford.

The Court: I think that matter ought to be submitted, and the Court will rule on it.

Mr. Isseks: As long as there has been this colloquy, would Your Honor care to hear from Mr. Freed briefly as to why it is admissible?

The Court: I don't think we ought to enter into any extended argument at this time. I would be glad to hear Mr. Freed.

Mr. Freed: I should like to press any additional points, if the Court wishes to have it submitted, that is in brief form, but in view of the fact Mr. Middleton has stated there are other reasons, and Judge Haight has stated there are other reasons, we want to be understood that this document is admissible in addition to the reasons stated by Mr. Apsey this morning. I would suggest, and might I ask the Court at this time, after we do submit briefs, that we have a further opportunity to argue the question? It is extremely important, and I think I should like to be heard on it at that time. I don't like to do it at a time which is inconvenient to the Court, but in due time I would like to have the opportunity.

* * * * * * *

[fol. 1372] Q. Mr. Smith, subsequent to this November 10th meeting at the Belmont Hotel, I want to ask you, did [fol. 1373] you ever finally get to see the principal instead of the intermediary?

A. I think we had a meeting with the representatives of the Owens Company sometime early in '22.

Q. Don't you remember there was a meeting on December 16th at the Ritz-Carlton Hotel, New York, at which were present Mr. Blair, Mr. Biggers, and Mr. Libbey, representing the Owens Bottle Company?

A. I remember I attended such a meeting. I don't remember the date.

Q. Who were there on behalf of your company?

A. Mr. Knox Smith, I was there. I don't know who else was there.

Q. Mr. Bartlett?

A. He may have been there, yes.

Q. Now, you were there as the executive head of the company, other than the president, who was attending to its affairs at Beechnut Company?

A. That is correct.

Q. You were also vice-president?

A. No, I was general manager.

Q. At least. Mr. Bartlett, you said before, was your patent lawyer. He was there?

A. He was there.

Q. What was Mr. Herbert Knox Smith doing there?

A. Mr. Knox Smith didn't become an officer until '22, but we did refer legal matters to him on occasions, only part of his time, and on a number of conferences back and forth he accompanied me.

[fol. 1374] Q. Wasn't he there all the time in connection with these Owens negotiations?

A. During the meeting, yes, but I was saying he didn't give us his full time.

Q. Didn't he go to all the Owens conferences in connection with these negotiations?

A. I don't know.

Q. What is your best recollection?

A. I would think he did.

Q. Don't you also remember he had an office in your place?

A. Yes, he had an office.

Q. He was inside general counsel——

A. But let me explain what I mean. When Mr. Smith returned from the war he didn't want steady occupation; he agreed to give us part of each week, and until much later on, when the business grew in '25 and '26, he only gave us part of his time.

Q. He then acted as secretary?

A. Yes.

Q. And in this period that we are talking about,—'20, '21, and '22, before he became secretary—didn't he have an office at Hartford?

A. Oh, yes. We always reserved him an office.

Q. And he had a secretary there, too.

A. Yes.

Q. He walked in and out just as if he were an employee, didn't he?

A. No, he did not. He walked in and out whenever it pleased him to do so.

[fol. 1375] Q. Was he on an annual basis or on a basis of work done?

A. He was on a very medium annual basis.

Q. You considered him what he considered himself, general counsel for Hartford-Fairmont Company?

A. Eventually so, yes.

Q. There is a document here dated February 21, 1921, which so shows?

A. If you find it "General Counsel" I would be willing to let it go.

Q. You never questioned him when he signed himself as general counsel during that period, did you?

A. No.

Q. Now, you said you remember conferences in New York, and you couldn't fix the date. I am going to show you a document marked Government Exhibit 23 for convenience, and which is a memorandum of an interview between representatives of the Owens and Hartford-Fairmont Companies, and has at the end, "H. K. S.—P." I ask you to read that document and see if it refreshes your recollection.

By the Court: I think we will take a 20-minute recess at this time.

(Short recess.)

[fol. 1376] (Afternoon recess.)

Mr. Isseks: If Your Honor please, at this time I should like to point out, it is my understanding that counsel for Hartford have stipulated that the documents marked Government's Exhibits 15 and 22, which have not been admitted in evidence, because of the objections made in the one case, and sustained in the other case, because determination of admissibility has been deferred, that these documents have been stipulated by counsel for Hartford as having come from the files of the Hartford-Empire Company.

There is no dispute about that.

Mr. Wall: May we just check that?

Mr. Isseks: I am also told in the case of the document marked Government's Exhibit No. 15 there is a stipulation as to its genuineness.

Mr. Wall: I will verify that right away.

The Court: 15 is the letter; 22 the memorandum.

Mr. Wall: The stipulation in regard to that is that the defendant Hartford-Empire will admit that the copies now in possession of the government, of such offered documents are true copies of papers appearing in the files of the Hartford-Empire, subject, however, to correction, if error appears.

I think I should read it through:

"but it is expressly understood and agreed that each party hereto reserves every right to object to the use or admission in evidence of each and all of said documents, or any part or parts thereof, on the grounds of irrelevancy, immateriality, privilege, and every other ground of objection whatsoever, save only as to the fact that each such docu- [fol. 1377] ment is a true copy of a document appearing in the files of the defendant Hartford-Empire Company; and it is further understood and agreed that this stipulation shall not be taken or construed as an admission by the defendant Hartford-Empire Company, or by any other defendant herein, that any of said documents, or any part or parts thereof, or the contents thereof, is in any wise binding upon it."

There is a second paragraph of the stipulation, which seems not material to the present question.

Mr. Isseks: Exhibit No. 23, the one the witness has in his hand, is also in that same category.

Exhibit No. 15 is a letter from Mr. Herbert Knox Smith to Mr. Sayles.

Mr. Wall: Exhibit No. 15 is in a stipulation which includes this language, if Your Honor please. It is this Schedule B attached to the stipulation between Hartford-Empire and the government, that if the document,

"or copies thereof, specified in the Schedules A and B hereto attached are offered in evidence by either of the parties hereto, neither of the parties hereto will object to the admission thereof in evidence for the lack of proof of genuineness, or on the ground that the document is a copy instead of an original, subject, however, to correction if error appears;"

there appears following that a reservation of all the objections which would seem to be not necessary to read into the record at this time.

[fol. 1378] The Court: Very well.

Your stipulations, then, apply to the letter Government's Exhibit 15; and to the memoranda of Herbert Knox Smith, being offered as Numbers 22 and 23.

Mr. Wall: That is correct.

Q. Mr. Smith, you have read the document, have you not?

A. I have just read it.

Q. Does it refresh your recollection that you attended a conference at which were present Messrs. Libbey, Owens, and Blair, and Biggers, on behalf of Owens Bottle Company; and yourself, and Mr. Knox Smith, and Mr. Bartlett, on behalf of the Hartford-Fairmont Company?

A. Yes sir.

Q. What is your recollection, after having read the document, of what took place at that time?

A. Only a general recollection,—that we discussed these various situations. We talked about some possible plan of getting together. I remember that there was suggested a holding company plan; and the rest of the meeting broke up, I remember now, with the appointment of Mr. Blair and Mr. Herbert Knox Smith as a sub-committee to work out some plan or plans.

Q. Do you remember anything else about the meeting?

A. Yes, very distinctly. I don't know whether it is in order, or not.

Q. Does it relate to the issues in this case?

A. The reason this meeting is a little more vivid in my mind, or more so than the other meetings, is because when I tried to explain what we thought we had of value, I apparently irritated Mr. Owens. He came over and said if I was working for him he would fire me. I asked him [fol. 1379] whether he would hire me back again. He said he might. That occasion places more definitely this meeting.

Q. Do you remember anything else about the meeting?

A. I think it was the first meeting with Mr. Libbey present.

Q. Do you remember anything else said at the meeting?

A. Not in detail; talking all around it.

Q. Do you remember that Mr. Owens did most of the talking on behalf of the Owens people?

A. Mr. Owens started off with giving a little resume of what they had accomplished with these machines, et cetera.

Q. Do you remember that he said when they started to manufacture automatic equipment, the industry was in a crude shape and a rather precarious condition, in words or substance?

A. I think that probably would be true.

Q. Do you remember he said the Owens machine became adopted and glass manufacturers used it generally and prospered?

A. I don't remember just what he said.

Mr. Isseks: I want your recollection as to the substance of the conversation. I am trying to refresh your recollection; that is all.

The Witness: I could not say he did not say it; but I just don't remember his particular words or the particular words spoken by the other people at that conference.

Q. Do you not remember that Mr. Owens said everything was going happily until the rise of what Mr. Owens called the plug feeder?

Mr. Middleton: May I suggest this: I may be entirely wrong, but in my limited practice, I have not before encountered an effort to refresh the recollection of a witness by reading the documents to him. The witness has seen [fol. 1380] the document. It either refreshes his recollection or it does not. But the procedure that Mr. Isseks is following is reading the document to the witness, and then asking him if that refreshes his recollection. That gets into the record the very thing which we must seriously object to putting in the record.

The Court: He is not reading these memoranda of Herbert Knox Smith into the record, so far as reading them to the Court is concerned.

Mr. Middleton: Everything he is asking the witness he is reading from this memorandum, and we have not had an opportunity to object to the exhibit. As an offer to prove, we do seriously object to it, because it is, again, both hearsay and a statement only of conclusions. I think this is entirely improper.

The Court: So far as the offering is concerned, that will be taken care of in due course, in the same manner that the three others have been handled, if it is offered; but I will overrule the objection, insofar as any attempt to refresh

the witness' memory are concerned, in the manner in which counsel is now doing it.

He may proceed.

Q. See if I can refresh your recollection as to what happened at that conference. Do you remember that Mr. Owens started the conversation, and he talked about what had gone on in the business before? You remember that, do you not?

A. In a general way, yes.

Q. Do you remember he said that, prior to the advent of this plug feeder, the industry had become fairly stabilized?

[fol. 1381] A. I don't know what I should say to you. I want to be entirely frank, Mr. Isseks. I don't remember his saying those very words.

Q. Did anybody say it at the meeting?

A. I don't remember anybody making that definite statement. There was a general expose by Mr. Owens of what the Owens Company accomplished by the use of their phenomenal machine; but I just can't remember what went on, hour after hour, at that meeting; who said what; and who did not say what.

Q. How long did it last?

A. I think until noon time; and then I think, Mr. Smith and Mr. Blair having been appointed a committee, that the meeting adjourned, but there, again, I am not sure.

Q. Was anything said by Mr. Owens with regard to what effect the advent of the so-called plug feeder had on the stability of the industry?

A. I don't know what he said; but I think he touched upon that subject.

Q. Was anything said by Mr. Owens during this conference as to prior efforts made by the Owens Company to work out something with your company?

A. This memorandum so states; and I think he did refer to the matter.

Q. Do you remember that Mr. Owens mentioned the fact that he made two previous attempts, and now was going to make a third attempt?

A. That is what the statement says.

Q. I want your best recollection.

[fol. 1382] A. I don't remember his saying it; but I do not doubt that he did make such a remark.

Q. Mr. Owens was a man who spoke up, did he not?

A. Oh, yes, very definitely.

Q. He was known to be an outspoken man?

A. Very definitely outspoken.

Q. Did he not say that if this third attempt on his part did not work out, there would be a real fight to the general finish?

A. I don't remember his saying that.

Q. Was he not pretty vigorous when he said there would be a fight by all proper means? In that connection I refer to paragraph 7, page 2, of this memorandum, and see if that refreshes your recollection as to what Mr. Owens said in that connection.

A. I can only answer as I previously have, Mr. Isseks; I do not myself remember that remark. This was a long time ago.

Q. Did Mr. Owens indicate there would have to be something worked out or else?

A. No. I think he indicated a desire that we make some deal.

Q. Did he not indicate during this conference that the result of a fight would have to be either that Owens would dominate the industry, or that the industry would be thrown open on a competitive basis, with any farmer being in a position to go into the glass business?

A. I don't know whether Mr. Owens said it, but I think somebody said if there was going to be a general free for all fight on this whole gob feed issue, it might prove disastrous to both companies,—something along that line.

[fol. 1383] Q. You remember this incident about his telling you that if he had anything to do with it, he would fire you? You remember that very vividly?

A. Yes, sir.

Q. That was characteristic of Mr. Owens?

A. Yes, sir.

Q. Do you not remember he said there would be a fight which would result in either Mr. Owens controlling——

A. No——

Q. —or the industry being in such a situation that there would not be any patent protection, and any farmer could get out and manufacture glass?

A. No, I don't remember any more than I have told you.

Q. You do remember somebody said something about if there was a fight, neither one of you would get anywhere?

A. Yes, sir.

Q. Do you not remember in that connection, or in connection with the discussion about if there was a fight and no one would get anywhere, Mr. Owens would still be able to get along because he was a glass manufacturer; whereas, your company, being only a licensor, would be entirely out of business?

A. No, sir.

Q. In that connection I direct your attention to paragraph 9 of this memorandum, on page 3; and see if that does not refresh your recollection.

A. I don't remember it, Mr. Isseks. I cannot deny that somebody or Mr. Owens did not say it; but, as far as my recollection goes, I don't remember Mr. Owens saying that.

Q. Do you remember anybody saying that?

[fol. 1384] A. No, not that.

Q. Do you remember Mr. Owens saying that probably his company and your company both had something; but that if you fought each other, the outside feeders would continue, and this would result in the destruction of the stability of the industry; you would knock each other off, and the outsiders would be able to go out and disorganize the industry? Do you remember him saying that?

A. No, I don't remember Mr. Owens saying that. I think probably the question as what would be the results if Owens and Hartford entered into a long litigation, might have been discussed; I don't remember in what form, or by whom.

Q. Do you not remember Mr. Owens saying that if you two companies fought, the outsiders felt safe; but that if you got together, the outsiders would probably run to cover?

A. I don't remember that.

Q. You don't remember that?

A. No, sir.

Q. I direct your attention to the paragraph beginning at the bottom of page 3, the paragraph numbered 11, and going over to page 4; and see if that refreshes your recollection?

A. I don't remember Mr. Owens saying that.

Q. Do you remember anybody else saying it at the conference?

A. No; but I think this whole subject may have been discussed, but in what detail, or by whom, or with whom, I have no recollection.

Q. There is another subject matter I am quite sure you must remember took place at this conference: the matter of your royalties: do you not remember that the Owens [fol. 1385] people objected that your royalty was too low?

A. I remember the question of royalties, because that was something in our own bailiwick.

Q. Right down in your alley?

A. Right down in our alley.

Q. Do you not remember that Mr. Owens said at this meeting, "Your royalties are too low"?

A. I don't remember Mr. Owens saying that.

Q. Or somebody from the Owens people saying that?

A. That was their attitude.

Q. And they said that at this conference?

A. I think so.

Q. Do you not remember they reminded you that your company got into the business by undercutting Owens' royalties; and that the outsiders now were undercutting both of you?

A. No, I don't remember that. I merely remember the statement that we ought to increase our royalties, and my objection to that, because I did not think it could be done or ought to be done.

Q. Did you say whatever should be done ought to be done?

A. I did not think it could be done or ought to be done.

Q. I am very sorry. I misunderstood you. I direct your attention to paragraph 12, page 4, and see if that does not refresh your recollection that Mr. Owens complained that Hartford got into this by undercutting royalties, and because you undercut, the outsiders undercut?

A. I don't remember Mr. Owens making this particular remark.

Q. Do you remember that Mr. Owens reminded you that you were the original price-cutter and royalty-reducer? [fol. 1386] A. No, sir.

Q. Do you remember that he complained because you had gone ahead and adopted this policy without consulting the Owens Company?

A. No, sir.

Q. And solely with a view to making money?

A. No; I merely remember his general attitude was that our royalties were too low, and should be raised.

Q. What did you say to it? You remember after looking at the document a little more than you remembered in the beginning?

A. Having read the document, I remember quite a few things.

Q. The business about firing you: that is not in the document.

A. Yes, I have always remembered that; and it was at this meeting that occurred.

Q. Looking at page 7, paragraph 16, see if it refreshes your recollection as to what you said? You were the principal representative, were you not, at this meeting, of Hartford-Fairmont?

A. Yes, sir.

Q. Look at that paragraph 16, on page 7, and see if that does not refresh your recollection as to what you said?

A. I don't think those were my exact words. I don't remember just what I said, but I am quite sure that I felt that any continued, extensive litigation between the Owens Company and ourselves would be a very bad thing, and might prove injurious to either company or to both. Now I cannot remember expressing that idea in just the words here that Mr. Knox Smith has quoted.

Q. I believe you testified before that Mr. Herbert Knox [fol. 1387] Smith was a man of great integrity?

A. That is correct.

Q. And ability?

A. That is correct.

Q. As far as you know, he was a man who also reported things accurately?

A. Accurately; but nobody could, coming home and trying to remember what took place in long conferences had before, and who said what, and why they said it.

Q. But he was a careful man, was he not?

A. Yes, I certainly would think he was.

Q. See if I cannot refresh your recollection what you said at this conference. Do you not remember you said, after the Owens people stated their piece, that the continued stabilization of the glass industry was important so far as your company was concerned and the Owens people were concerned?

A. I don't remember saying that; but I would not deny that I did not, Mr. Isseks.

Q. You have said that in other connections, have you not?

A. Yes, sir.

Q. I will show you that in documents later on. You saw them last night, I suppose. You said that yourself?

A. I do not deny it.

Q. I am trying to get your recollection of what you said to the Owens people?

A. I am telling you I don't recollect saying that to them; but I do not deny saying that to them.

Q. Do you not remember you also said that continued patent litigation between the two companies might destroy [fol. 1388] all of the advantages of any patent monopoly?

A. I don't remember saying that.

Q. Do you not remember you also said that although your company might suffer if the field were thrown open to all newcomers, nevertheless, manufacturers like Owens and Illinois Glass would suffer far in excess of what your losses would be?

A. I don't remember saying that.

Q. Would you deny that you said it?

A. No, sir.

Q. What did you say about these royalties? Have you any recollection other than what you had before, after reading page 7, as to what you said about royalties?

A. I thought I just said a minute ago, I did not agree that royalties could be increased, or that it was desirable to increase them.

Q. You said that a sub-committee of Mr. Knox Smith and Mr. Blair were appointed to proceed further in the matter?

A. That is correct.

Mr. Isseks: If Your Honor please, at this time I should like to offer this document, Government's Exhibit No. 23, so marked: with the understanding that as a part of the memorandum which we will submit, and counsel for the defendant will submit, this matter will be gone into; and Your Honor will defer decision until the memorandum is submitted.

The Court: Very well.

Mr. Middleton: Objection.

Q. For the record, I should like to ask the witness whether there was anybody in the company, in 1920 or 1921, whose initials were H.K.S., besides Mr. Herbert Knox Smith?

[fol. 1389] A. None that I remember.

Q. There is no question in your mind, as president of the Hartford-Empire, and general manager of the Hartford-Fairmont Company, that the initials H.K.S. were written by Herbert Knox Smith?

A. Not if his initials are on them and in his handwriting. I have not seen any yet but what I believe to be his.

Mr. Isseks: At this time I am going to show the witness a document that he wrote. I don't know whether it is in the papers we gave these gentlemen yesterday.

Mr. Wall: That is correct, Mr. Isseks, it is.

Mr. Isseks: If they have it, Your Honor has it. It is dated January 24, 1922, and it is going to be marked Government's Exhibit No. 24.

Q. This memorandum, which is marked Government's Exhibit No. 24, is dated January 24, 1922; and it has at the heading of it: "Report Re Owens' Proposal, by F. Goodwin Smith"; and at the end, has the initials F.G.S.-A.; and I should like to hand you that document and ask you whether you wrote it?

A. I wrote that, Mr. Isseks.

Mr. Isseks: I offer it in evidence.

The Court: It may be admitted.

Mr. Middleton: Subject to the objection of all parties.

Mr. Wall: Just for clarity, shall we note at this time that between the date of this last exhibit, No. 23, and No. 24, there was another meeting?

Mr. Isseks: Yes. I am going to show him a memorandum [fol. 1390] of those conferences. I think Mr. Wall's suggestion is very appropriate, and I want to go back. I simply wanted to show the witness a document he had written.

Q. Does that document not refresh your recollection that at the meeting at which Mr. Owens was present, at the Ritz-Carlton, on December 16th, you took the position, and so stated, that any arrangement to be worked out between your company and the Owens Company would stabilize the industry, and strengthen the patent assets for the purpose of eliminating outside feeders and machines?

A. No; I think it is perfectly true, Mr. Isseks, that if you could settle patent interferences in the office, you would naturally speed up the time your patents would issue, and probably increase your strength and your position.

Q. It does not refresh your recollection as to your position in the matter that so far as you were concerned——

A. That we should get together.

Q. One of the reasons why you should get together would be the stabilization of the industry and the elimination of outside feeders and machines?

A. I believed to help stabilize the industry was desirable.

Q. You always did believe that?

A. Yes, sir.

Mr. Haight: He stated that he thought the offer of Owens was based on these propositions; not Mr. Smith.

Mr. Isseks: He said he always took the position that you ought to stabilize the industry.

Your Honor, the government would like to have this document read. Mr. Kramer will read it; and then I should like [fol. 1391] to ask the witness some questions as to prior conferences and prior memoranda.

Thereupon, Mr. Kramer, of counsel for the government, read to the Court Government's Exhibit No. 24.

Q. Mr. Smith, you testified before that at the December 16th meeting, at which were present the larger group, there was a sub-committee appointed of Mr. Knox Smith, representing your group, and Mr. Blair representing the Owens group. It is not in that memorandum; it is Government's Exhibit No. 23?

A. That is correct.

Q. Do you not recall Mr. Knox Smith reported to you the conference he had with Mr. Blair later in the day of December 16th?

A. He may have; I do not doubt it; but I don't recall it.

Q. See if I can refresh your recollection. In Mr. Knox Smith's diary for December 20, he has an entry which I should like to have you read, and see if that does not refresh your recollection that he told you and went over with you the memorandum of the conference, later in the day of December 16?

A. Yes, it states it to be true, and I do not deny it.

Q. To refresh your recollection that he went over with you——

A. I don't remember; but I assume that he did.

Q. If Mr. Knox Smith wrote in his diary an entry that he went over the memorandum with you——

A. Then, I assume he did.

Q. Then you say he must have; there is no question but what he did?

A. I don't remember; if that is in his diary.

Q. Do you not remember that Mr. Knox Smith told you [fol. 1392] after he talked to Mr. Blair later in the day of December 16th, he was supposed to send a copy of a memorandum of the conference with the big group out to Mr. Blair?

A. I don't remember it.

Q. Do you not remember that Mr. Knox Smith prepared a lengthy memorandum of the conference at which you were all present; and then it was decided by the Hartford people to have an expurgated edition, to cut it down?

A. No, sir.

Q. And then sent that to Mr. Blair?

A. No, sir.

Q. See if I can help you out. Look at the item of December 23, and see if that does not refresh your recollection that you had two copies of that memorandum, one unexpurgated, and one expurgated; and that he sent the expurgated one to Mr. Blair?

A. This says he did prepare such a memorandum. It does not say he showed it to me.

Q. I call your attention to the last item there, which indicates he prepared an unexpurgated one for your company, and prepared an expurgated one for Mr. Blair?

A. That is what this diary states.

Q. I am trying to get your recollection.

A. I have no recollection.

Q. You don't remember that you had two different memoranda?

A. No, sir.

Q. Do you not remember that Mr. Knox Smith talked to you of the conference he had with Mr. Blair later in the day of December 16th?

[fol. 1393] A. I assume he naturally would, but I don't remember.

Q. I am going to show you a document which is going to be marked Government's Exhibit No. 25. It is headed "Memorandum of outline of plan suggested at meeting December 16, 1921;" and has in the right hand side in handwriting, "December 20, 1921", and has at the end "H.K.S.-P." I ask you to read that.

Mr. Middleton: Do we have this Exhibit No. 25?

* * * * * * *

Mr. Haight: I should like to ask Mr. Smith one or two questions that would clear up something in my mind.

Mr. Haight:

Q. I understand, Mr. Smith, in looking at these documents or memoranda purporting to have been made by Mr. Knox Smith, they did not, except where you have so testified, incite in your mind an independent recollection of the matters recited there in detail; is that right?

A. They did not.

Mr. Haight:

Q. I understand, further, that you had a general idea of things that happened, but could not remember the details as they are recited; and what you have testified to this af- [fol. 1394] ternoon and this morning, with respect to these various documents, is based upon the fact that you have now, twenty years after those occurrences, no independent recollection of the details, except so far as they are embodied in the general impression that you have given us on the stand today?

A. I have no recollection. I have tried to recall, but the details are quite gone from me.

Mr. Isseks:

Q. You are not disputing the evidence you have given where you said you did have a recollection?

A. No, sir.

Mr. Isseks: I believe the last question was where I asked the witness to read a document. I should appreciate it if he would read the document between now and tomorrow morning.

Thereupon the trial was adjourned to Wednesday morning, March 5, 1941, at ten o'clock a. m.

[fol. 1395] March 5, 1941, 10:00 A. M.

The Court: You may proceed.

Q. Mr. Smith, last night, just as we adjourned, I asked you to read Government's Exhibit No. 25, which is a "Memorandum of outline of plan suggested at meeting of December 16, 1921;" and purports to have been written by Knox Smith. Have you read it?

A. Yes, I ran over it.

Q. Before asking you any questions about that document: Do you remember yesterday when I showed you Government's Exhibit No. 24, which was a document you read, and which has been marked in evidence and dated January 24, 1922, your counsel pointed out that there was an intervening conference between the December 16 conference and the date you wrote that memorandum. You remember that question? Mr. Wall made the point.

A. I have forgotten just what I said.

Q. Do you remember there was an intervening conference with the Owens people?

A. After the 16th?

Q. Between December 16th and January 22, the date of Government's Exhibit No. 24?

A. I think there was.

Q. Do you not remember that there was a meeting at the Ritz-Carlton, in New York, on January 10?

A. January 10.

Q. What is your present recollection of who were present at the conference?

[fol 1396] A. At the conference were Mr. Owens and Mr. Biggers.

Q. See if I can refresh your recollection—Mr. Blair, Mr. Biggers, Mr. Knox Smith and yourself?

A. Yes, sir.

Q. I hand you a document which has been marked Government's Exhibit No. 26, and which has on the top thereof, "Memorandum of interview between Owens and Hartford-Fairmont Companies, January 10, 1922;" and has at the end of the fourteen pages, "H. K. S.-P."; and has a handwritten notation on the top, "January 17, 1922." Whose handwriting is that?

A. Mr. Knox Smith's.

. . . . . .

Q. On the original, there is handwriting in the upper left hand corner. I am asking you whose handwriting that is.
A. There are no initials here.
Q. I want to see whether you can recognize it.
A. I think it is probably Mr. Safford's.
[fol. 1397] Q. Is that not your handwriting?
A. No, sir.
Q. Sure of that?
A. Absolutely.
Q. You say absolutely it is not your handwriting?
A. Yes, sir, it is not.
Q. Do you recognize it as anybody else's?
A. I said if I had to guess on it, I would guess probably Mr. Safford.
Q. Was Mr. Safford with the company in 1922?
A. No, sir.
Q. Will you be kind enough to read the document?

(Witness reads the document.)

Q. You have read it?
A. I have.
Q. You attended that conference?
A. I did.
Q. You notice the document is dated in the handwriting, I think you testified, of Mr. Knox Smith?
A. That is his handwriting.
Q. January 17, 1922?
A. That is right.
Q. I show you Mr. Knox Smith's diary, and ask you to read the first entry, of January 17; the third entry, of January 18; and the second entry, for January 19.

(Witness does.)

Q. You have read it, have you?
A. Yes, sir.
[fols. 1398-1399] Q. Does that refresh your recollection that you went over the memorandum with Mr. Knox Smith?
A. This memorandum?
Q. Yes.
A. I don't remember, but I think the probabilities are that I did.
Q. You notice that Mr. Knox Smith in his diary said that you went over it and approved it as changed?

Mr. Haight: Objection to his stating in the record what is said in the diary.

Mr. Isseks: All I am doing is calling attention to what is there.

The Court: The objection will be overruled, if he knows.

Mr. Haight: Exception.

Q. Look at the entry of January 19.

Second last previous question read.

A. I do.

Q. Does that not refresh your recollection that you did go over it with him and approved it as changed?

A. I don't think there is any doubt that probably I did go over it with him. I cannot remember. It might be a very natural thing to do.

Mr. Isseks: I offer the document in evidence.

* * * * * * *

[fol. 1400] Q. You read this document. Does that not correctly refresh what took place at that meeting?

A. That I cannot tell you, Mr. Isseks. Some of it I do remember; but as to the rest of it, as to what he said or the details of the discussions, I will have to say to you the same as I did yesterday: I don't remember.

* * * * * * *

[fol. 1401] The Witness: I do not think there is much question but what I read that document with Mr. Knox Smith at the time it was written.

[fol. 1402] Mr. Isseks: Is that not enough?

Q. At that time what was set down stated what transpired at the meeting?

A. I think that was the purpose of the document.

Q. You did not put down anything that did not take place?

A. I did not write the document.

Q. Mr. Knox Smith did not put down anything that did not take place, when he discussed the matter with you?

A. He did not intend to; but he might elaborate on some things that I would not elaborate upon.

Q. But he would set down,—that was his policy, what took place?

A. As best he could. He made certain notes. I remember the process. He would go down to a meeting, and come back with certain notes; and sometimes after he would come

home, a week or ten days, he would take the notes; and then try, according to his habit, to write down in a memorandum what he thought took place at these various meetings.

Q. This particular one, you say you have no doubt he went over it with you? Those are your words?

A. I think he must have, otherwise he would not have made that entry.

Q. Have you any doubt that he set forth correctly what transpired at that meeting?

A. According to his own views, I think he set forth what transpired.

Q. You also said you have no doubt he talked it over with [fol. 1403] you, after I showed you the entry?

Mr. Haight: Objection.

The Court: Objection overruled.

Mr. Haight: There are expressions of opinions and things of that kind. They are clearly not admissible as opinions of Mr. Knox Smith or some things of that kind. That is what I had in mind in asking that it follow the regular rule. As you read it off, there are parts of it, we think, are expressions of opinion. I will ask Your Honor to rule on those.

Mr. Isseks: We disagree with counsel.

The Court: Exhibit 26 may be admitted. (See Tr. 237)

The Witness: May I say this: Oftentimes, he would simply report a conference according to his lights as to what took place; and I would tell him, as a third party, as to what I thought took place. We two often had disagreements, because the legal mind laid emphasis upon certain things, and the business mind laid emphasis on some other things. I want it understood that is not my language or not my report; although I did, according to my memory being refreshed, read it over at that time. I think I must have.

Q. Before we have it read—it has been offered in evidence—I should like to clear the whole thing up, this whole problem of memoranda of conference that Mr. Knox Smith made. First of all, he was, at that time, the early part of 1922 and the latter part of 1921, general counsel of your company?

A. That is correct.

Q. He was inside counsel to the—I mean by that he was not somebody who had offices elsewhere; he was someone [fol. 1404] you were in touch with all of the time?

A. That is correct.

Q. He was also the gentleman you asked to practically all these meetings with the Owens people?

A. That is correct.

Q. He made these memoranda, did he not, for the purpose of keeping a record of what took place between both sides, from your angle?

A. To keep a record for himself.

Q. Was he not doing it for the benefit of your company?

A. He may have felt that. We never asked him to do it. It was a personal habit he had. Whenever he went out and came back from a conference, he would take notes. Some time when he had time to write up his notes, he wrote them up.

Q. On that occasion he talked to you about the memorandum?

A. I think he must have, without question.

Q. Did you not at various times go over these memoranda for the purpose of transmitting them to your other associates?

A. No, not generally. As I testified yesterday, when he himself was not sure in his own mind as to, did I say this, or somebody else say that, he might come in and ask me what I remembered.

Q. You are not trying to suggest, are you, that these memoranda were something he kept solely for his personal use?

A. I think he thought it was good business to keep them for his own use and as a record.

Q. A record for the Company's use?

[fols. 1405-1407] A. Yes, sir.

Q. The diary which I showed you was something he kept as a sort of memorandum of daily occurrences, like lawyers do?

A. I don't know why he kept his diaries.

Q. They were certainly different, the memorandum from the diary?

A. Yes, sir.

Q. The memorandum was a memorandum for the benefit of the company, was it not?

A. I assume he thought so.

* * * * * * *

[fol. 1408] Q. Now, Mr. Smith, I note in the last page it is stated in the memorandum that you said at the meeting nothing could be done until the next executive meeting of Hartford-Fairmont Company, which would not take place until January 27th. Do you have any present recollection of taking the matter up with the executive committee on January 27th?

A. I think unquestionably so, Mr. Isseks.

Q. You think it was taken up?

A. I don't think there is any question about it. I don't remember the date, or just where.

Q. I notice on page 8 of this memorandum, Item 19,—I will show it to you,—Item 19 of Exhibit 26, there is a statement that Mr. Blair handed to you and your associate, Mr. Knox Smith, a memorandum setting forth the Owens view. Do you remember that incident taking place?

A. I remember there was a memorandum handed to us by the Owens people.

Q. I hand you a document which for convenience will be marked Government's Exhibit 27, which is entitled "Memorandum of Proposal of Settlement with Hartford-Fairmont Company" and has file stamp "Received, William H. Honiss, January 12, 1922"; it is dated January 9, 1922; and it purports to come from your files. I think there is a stipulation that it comes from your files. If I am wrong counsel can correct me.

Mr. Wall: I think you are quite right. I will check it in a minute. (After checking same:) It did come from our files.

[fol. 1409] Q. I will ask you whether that is a photostatic copy of the document that was handed by Mr. Blair to you and Mr. Knox Smith at the meeting of January 10th.

A. Well, I assume it must be; I don't know, Mr. Isseks, but it is from our files, and it has the same date you referred to and it is evidently written by somebody in the Owens group.

Q. You don't dispute that this is a photostat of the original document handed to you at the meeting?

A. I would assume it to be.

Mr. Isseks: I offer it in evidence.

Mr. Middleton: We must object to this, inasmuch as it is presented as having come from Owens. Now, we don't

know where it came from, there is no signature of any kind on it. There is no letter of transmittal identifying it, and inasmuch as it would purport to be merely a statement submitted, and having nothing in addition to identify it, we object to it.

Mr. Isseks: The document in evidence states, Mr. Blair handed it to the witness, and Mr. Knox Smith. The witness says he "assumes" so, and it is not disputed this is the document, because the witness saw it, it came from Owens, it is dated January 9th. The memorandum here written by Mr. Knox Smith, which the witness has identified, shows the document referred to as Owens' Plan, which was dated January 9th. Of course there was no letter of transmittal. It was handed to the gentleman. How can you have a letter of transmittal?

The Court: That paragraph 19 of Exhibit 26 says Mr. Blair handed to Messrs. Goodwin and Knox Smith a memo-
[fol. 1410] randum. I think the objection will be overruled.

Mr. Isseks: I would like to have my associate read this one.

Mr. Haight: May I make one observation for Your Honor's benefit? In these and in subsequent documents along this particular line the testimony will develop—I think Mr. Isseks will not question it—that this so-called holding plan never was adopted. Never was worked out.

Mr. Isseks: That is right.

Mr. Haight: And as I understand it there was never any increase of royalties.

Mr. Isseks: They worked out a plan which had the same result, that is our theory; and our theory is they started as early as the latter part of 1921; it is in evidence even before that.

Mr. Haight: I had thought none of these proceedings except as it shows intent which is directly related to what they eventually did, was admissible, but Your Honor overruled that in connection with the Corning contract the other day, and we are not renewing objections which have been dealt with. I thought Your Honor should know this holding company plan was not actually adopted.

The Court: Of course the Court cannot anticipate; it does not know.

Mr. Isseks: If you want to hear it? Our theory is even though the particular plan did not go through, it went over to the next plan. The next plan was a holding company.

I don't want to tell you what it is, but it had the same effect. Owens got, I have forgotten whether a half or a [fol. 1411] third—I think a half—of all the royalty income after certain deductions, I think it was $600,000. I don't want to stop to ask the witness the question, but I cannot keep all the facts in my head. My recollection is the '24 contract gave Owens the kind of control they wanted to have, which is the same kind of control they wanted in the beginning. Of course, the Hartford people tried to keep as much as they could but Owens got into the picture, as Your Honor can see, and maintained this connection right up to the present time, according to our light.

The Court: You may proceed.

(Thereupon Government's Exhibit 27 was read in evidence.)

[fol. 1412] (Short recess taken.)

Q. Mr. Smith, will you look at page 2 of Exhibit 2 and advise me whether you can identify the handwriting in the left-hand side?

A. No, I cannot; very indistinct.

Q. It is not yours?

A. It is not mine.

Mr. Isseks: The clerk advises me Your Honor failed to rule on the admissibility in evidence of Government Exhibit 1, which is a 1916 agreement.

The Court: I recollect that. That may be admitted.

Q. How, Mr. Smith, over night,—that is, last evening,—you were asked to look at Government Exhibit marked for convenience 25, which is memorandum of outline of plan suggested at meeting of December 16, 1921, at New York City, and at the end it has the initials of Mr. Herbert Knox Smith. You read that, did you not? Government Exhibit 25,—I believe you said you read it before?

A. I think I did, Mr. Isseks. I am getting a little bit confused on what I did read or didn't read, and the evenings are not long enough to read them all.

Q. Let me see if I can refresh your recollection.

Mr. Wall: Let's understand. You mean you read it last night?

Mr. Isseks: I don't mean he read it at the time. I will come to that.